

## TITLE 13. CALIFORNIA AIR RESOURCES BOARD

**NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION**

The Air Resources Board (the Board or ARB) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to regulations regarding the availability of motor vehicle service information in California.

DATE: January 22, 2004

TIME: 9:00 am

PLACE: California Environmental Protection Agency  
Air Resources Board  
Central Valley Auditorium, Second Floor  
1001 I Street  
Sacramento, CA 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., January 22, 2004, and may continue at 8:30 a.m., January 23, 2004. This item might not be considered until January 23, 2004. Please consult the agenda for the meeting, which will be available at least 10 days before January 22, 2004, to determine the day on which this item will be considered.

The facility is accessible to persons with disabilities. If you have special accommodation or language needs, please contact the ARB's Clerk of the Board at (916) 322-5594 or [sdorais@arb.ca.gov](mailto:sdorais@arb.ca.gov) as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

**INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT  
OVERVIEW****Sections Affected:**

Amendment of title 13, California Code of Regulations (CCR), division 3, chapter 1, Motor Vehicle Pollution Control Devices; article 2, Approval of Motor Vehicle Pollution Control Devices (New Vehicles), section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles, and the document incorporated therein, "Society of Automotive Engineers (SAE)

Recommended Practice J2534, "Recommended Practice for Pass-Thru Vehicle Programming," January 2004, and incorporation by reference of the following documents: The Maintenance Council's Recommended Practice RP1210A, "Windows™ Communication API," July 1999, and SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," October 1998.

### **Background**

Senate Bill 1146 (SB 1146), enacted in 2000 and principally codified at Health and Safety Code section 43105.5, directed the ARB to develop service information regulations no later than January 1, 2002. The legislation requires all manufacturers of 1994 and later model vehicles equipped with second generation, on-board diagnostic systems (OBD) to make available for purchase emission-related service information to independent service facilities and the aftermarket parts industry. On December 13, 2001, the Board approved adoption of the ARB's service information regulation, which was formally implemented on March 30, 2003.

The regulation ensures that California service technicians have access to all service information literature, OBD descriptions and diagnostic information, training, and tools necessary to effectively diagnose and repair emission-related malfunctions. The regulation also requires vehicle manufacturers to make the information and tools available to aftermarket parts manufacturers to better ensure the availability of emissions-related replacement parts. Motor vehicle manufacturers are required under the regulation to make all text based service information available directly over the Internet. They are also required to make available for sale diagnostic tools that are supplied to their franchised dealerships. The data stream information on which these tools are based must also be made available to aftermarket diagnostic tool manufacturers to enable them to incorporate comparable emission-related functions into their tools. The regulation mandates that the prices charged by the vehicle manufacturers for the above information and tools must be fair, reasonable, and nondiscriminatory. Pursuant to the regulation, all light- and medium-duty vehicle manufacturers currently have operational service information websites on the Internet.

At the time the Board adopted the service information regulation, it directed the staff to monitor the implementation and effectiveness of the regulation, and to report back to the Board with necessary amendments within two years. Over the last two years, the ARB staff has worked with vehicle manufacturer and independent service industry stakeholders, and is proposing amendments to address an unresolved issue from the December 2001 Board hearing. The staff is further proposing amendments to the regulation that expand the scope of the regulation to heavy-duty vehicles equipped with OBD systems.

In drafting the regulatory amendments, the ARB staff met with engine and vehicle manufacturers, aftermarket parts manufacturers, trade associations and other interested

parties in various meetings and via phone calls. Staff issued Mail-Out MSO #2003-03 on July 7, 2003, which explained staff's proposed amendments to the service information regulation. Several written comments were submitted to the ARB in response to the mail-out and were considered in the development of the final proposal. Following the issuance of the mail-out, the staff also held a public workshop on August 14, 2003, to discuss the draft proposal. Representatives from both the vehicle manufacturing and aftermarket industries attended, and provided comments and testimony.

### Proposed Amendments

Below is a summary of the staff's proposed amendments for consideration by the Board:

#### Testing Remanufactured On-Board Computers Equipped with Immobilizers

At the December 2001 Board hearing, significant discussion took place on the subject of passive anti-theft systems otherwise known as immobilizers. Specifically, the discussion focused on whether remanufacturers of on-board computers were entitled under SB 1146 to immobilizer initialization information necessary to facilitate bench testing of remanufactured immobilizer equipped computers. The Board adopted staff's recommendation that the statute did not provide on-board computer remanufacturers with the right of access to specialized immobilizer initialization information. Nonetheless, the Board directed the staff to work with stakeholders to determine if there were ways for remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security.

Over the past two years, the ARB staff has held several discussions with vehicle manufacturers and on-board computer remanufacturers. Based on these discussions, the staff believes that a reasonably practical, cost-effective, and secure solution is available that will work with most vehicle manufacturers' on-board computer designs. The solution centers on the use of generic scan tools and other low-cost tools and equipment that would allow on-board computer remanufacturers to use repair industry initialization procedures to bench test rebuilt computers. Under the recently finalized amendments to federal service information requirements, vehicle manufacturers must provide these low-cost initialization methods for use by aftermarket service technicians. (40 Code of Federal Regulations (CFR), Part 86, section 86.096.38(g)(6).) These same methods can be adapted by on-board computer remanufacturers for their testing purposes. To further ensure the availability of these procedures in California, the ARB staff is proposing to amend the California regulation to include language similar to that in the federal service information rule. The amendment should also reduce immobilizer reinitialization costs for the vehicle service industry.

### Heavy-Duty Applicability

The ARB is currently in the midst of developing requirements for all 2007 and later model year heavy-duty vehicles (i.e., vehicles weighing more than 14,000 pounds gross vehicle weight rating) to be equipped with OBD systems. Because OBD is an important tool used to diagnose and repair vehicles, staff is proposing an amendment to require manufacturers of heavy-duty engines and transmissions to make service information and tools available for purchase.

Minor revisions to the requirements, as they would apply to heavy-duty manufacturers, are included in the staff's proposal to reflect inherent differences between the light- and heavy-duty vehicle industries. The differences include an option for heavy-duty manufacturers to require users of diagnostic tools to be trained in their proper use as a condition of sale. Staff also proposes to allow the heavy-duty industry to use standardized practices for reprogramming and nomenclature already in existence for the industry.

### J2534 Update

The existing regulation requires on-board computer reprogramming for 2004 and later model year light-/medium-duty vehicles to be in compliance with the Society of Automotive Engineers (SAE) J2534, which is incorporated by reference into title 13, CCR, section 1969(f)(3)(A). To address minor implementation issues that have arisen with the introduction of reprogramming equipment for 2004 model year vehicles, the SAE has amended the J2534 protocol by adding further detail and clarification. The staff is proposing that the most recent version of SAE J2534 document be incorporated into the regulation.

### Other Modifications

Minor modifications are proposed to further harmonize the regulation with current federal service information requirements, to clarify existing requirements, and to improve the effectiveness of the regulation.

### Comparison with Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) approved amendments to its service information regulation on May 30, 2003. (See 40 Code of Federal Regulations part 86, sections 86094.38 et seq.) The amended federal rule, with one significant exception, is very similar to the ARB's existing regulation, including requirements for service information to be made available over the Internet and for the availability of diagnostic tools and training information. The primary difference between the two regulations is that the existing ARB service information regulation provides that the aftermarket parts industry is entitled to information and tools; the federal regulation

ensures information access only to the service and repair industry. The broader scope of the California regulation was directed by the mandates of SB 1146.

The ARB and the U.S. EPA have worked towards harmonization to ensure that federal and state requirements do not conflict. With the staff's proposal, the regulations would continue to be similar with respect to most requirements. Some differences would, however, continue to exist. Most significantly, in accord with the directives of SB 1146 and other Health and Safety Code provisions, the scope of the California regulation would continue to apply to the aftermarket parts industry. Additionally, the regulation would be broadened under staff's proposal to include heavy-duty engine and transmission manufacturers. Federal requirements apply only to light- and medium-duty manufacturers (as defined under California regulations).

### **BENEFITS OF THE PROPOSAL**

The ARB staff's proposal would help ensure that the heavy-duty vehicle service industry has access to adequate information, tools, and replacement parts necessary to diagnose and repair emission-related malfunctions. The proposed amendments will help to maximize the emission benefits to be realized by stringent 2007 and later model year emission standards for heavy-duty vehicles and the ARB's future OBD regulation for such vehicles. By 2010, the ARB projects that new heavy-duty diesel emission standards will reduce oxides of nitrogen and particulate matter statewide by 48.0 and 2.7 tons per day, respectively.

The proposal would also help to ensure that on-board computer remanufacturers have access to adequate information and tools to continue their business. The availability of lower cost replacement parts, including on-board computers, will increase the likelihood of prompt repairs when emission-related malfunctions do occur.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, and supporting technical documentation. The staff report is entitled: "Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider Amendments to Regulations for the Availability of California Motor Vehicle Service Information."

Copies of the ISOR and full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on the ARB's website listed below or may be obtained from the ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First

Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (January 22, 2003).

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons: Dean Hermano, Air Resources Engineer, at (626) 459-4487, or Allen Lyons, Chief, Mobile Source Operations Division at (626) 450-6156.

Further, the agency representative and designated back-up contact person to whom non-substantive inquiries concerning the proposed administrative action may be directed are respectively Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, and Alexa Malik, Regulations Coordinator, (916) 322-4011. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the agency contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the ARB's Clerk of the Board at (916) 322-5594 or [sdorais@arb.ca.gov](mailto:sdorais@arb.ca.gov) as soon as possible. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

This notice, the ISOR and all subsequent regulatory documents, including the Final Statement of Reasons (FSOR), when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/cmvsip04/cmvsip04.htm>

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESS AND PERSONS AFFECTED**

The determinations of the Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

The Executive Officer has determined pursuant to Government Code section 11346.5(a)(5) that the amendments will not create costs or mandates to any local agency or school district whether or not reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code, or other nondiscretionary savings to local agencies. The Executive Officer has further determined pursuant to Government Code section 11346.5(a)(6) that the proposed regulatory amendments will not create any costs or savings to any state agency, or any cost to any local agency or school district that is required to be reimbursed under Part 7

(commencing with section 17500), of division 4, or other nondiscretionary cost or savings imposed on local agencies, or any cost or savings in federal funding to the state.

The Executive Officer has also made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Executive Officer has further determined that there should be insignificant, potential direct cost impacts, as defined in Government Code section 11346.5(a)(9), on representative private persons or businesses acting in reasonable compliance with the proposed action. The proposed service information regulation will directly affect approximately 30 heavy-duty engine and transmission manufacturers. Although heavy-duty engine and transmission manufacturers would incur costs to comply with the regulation, some or all of these costs may be recoverable through the sale of service information and tools. The proposed amendments would likely have a small positive cost impact on independent service repair facilities and aftermarket part manufacturers that do business in California because of the greater availability of service information and tools. Although the proposed amendments may indirectly have some adverse cost impacts on heavy-duty vehicle franchised dealerships and service networks in California through the loss of some repair business to independent service facilities, the impact would be the result of increased competition, consistent with the intent of the Legislature in drafting SB 1146.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not result in the elimination of jobs or elimination of existing businesses within the State of California.

The Executive Officer has determined that the proposed action may possibly create some jobs, create new businesses, or promote the expansion of businesses currently doing business within California. An assessment of the economic impacts of the proposed regulatory action can be found in the staff report.

The Executive Officer has further determined, pursuant to Government Code sections 11346.3(c) and 11346.5(a)(11), that the regulatory requirements for motor vehicle manufacturers to file reports are necessary for the health, safety, or welfare of the people of the state.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small business. Small businesses in the aftermarket service and parts industries should be positively affected by the availability of service information and tools. And, as noted above, while some heavy-duty vehicle

d alerships and service network facilities may be adversely affected by the potential for increased competition, this result was the intent and purpose of SB 1146.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the agency or that has been otherwise identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

### **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, January 21, 2004**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 "I" Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic mail is to be sent to: [cmvsip04@listserv.arb.gov](mailto:cmvsip04@listserv.arb.gov) and received at the ARB by no later than **12:00 noon, January 21, 2004**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than **12:00 noon, January 21, 2004**.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

### **STATUTORY AUTHORITY**

This regulatory action is proposed under the authority granted to the ARB in California Health and Safety Code sections 39600, 39601, 43000.5, 43018, 43105.5, and 43700. This action is proposed to implement, interpret or make specific sections 39027.3, 43104, and 43105.5 Health and Safety Code.

## HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public adequately has been placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, for at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

  
Catherine Witherspoon  
Executive Officer

Date: November 24, 2003



State of California  
AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS  
FOR PROPOSED RULEMAKING

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO  
REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR  
VEHICLE SERVICE INFORMATION**

Date of Release: December 5, 2003  
Scheduled for Consideration: January 22, 2004

This report has been reviewed by the staff of the California Air Resources Board and approved for publication. Approval does not signify that the contents necessarily reflect the views and policies of the Air Resources Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

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Attachment – Proposed Amendments to the California Regulations to Title 13, California Code of Regulations, Chapter 1 Motor Vehicle Pollution Control Devices, Article 2 Approval of Motor Vehicle Pollution Control Devices (New Vehicles); Section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty Trucks, Medium-Duty Vehicles and Heavy-Duty Vehicles.

## EXECUTIVE SUMMARY

The Air Resources Board (ARB or Board) staff is proposing to amend the regulation that requires the availability of emission-related service information for 1994 and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with second generation On-Board Diagnostic (OBD) systems. This proposal is in accordance with the requirements of Senate Bill 1146 (SB 1146), which is principally codified at Health and Safety Code Section 43105.5. In December 2001, the Board approved for adoption an initial regulation implementing the provisions of SB 1146 as they apply to manufacturers of the above-identified vehicle classifications (title 13, California Code of Regulations section 1969 and title 17, California Code of Regulations sections 60060.1 through 60060.34). The existing service information regulation became effective on March 30, 2003.

Staff is now proposing that the regulation be broadened to include manufacturers of new heavy-duty engines and transmissions as their products become subject to OBD requirements that are separately under development by ARB staff. The staff has determined that the needs of the heavy-duty aftermarket industry for emissions-related service information and tools are substantially the same as for the aftermarket segments covered by the existing regulation. Access to comprehensive emission-related information and tools will allow the aftermarket service industry to remain competitive in the marketplace with dealership service centers and manufacturers of original equipment parts.

Under staff's proposal, most of the provisions of the regulation that now apply to light- and medium-duty vehicles would also apply to heavy-duty vehicles. The regulation would require text-based service information, such as service manuals, technical service bulletins, and training materials, to be made available for purchase over the Internet at fair, reasonable, and nondiscriminatory prices. It would also require that heavy-duty manufacturers offer for sale the same emission-related diagnostic tools that are used by dealership technicians, along with information necessary for the same diagnostic capabilities to be designed into generic aftermarket tools. The staff's proposal contains necessary adjustments to reflect differences between the light-duty and heavy-duty vehicle manufacturing and service industries.

The ARB staff is also providing an update on the issue of access to information needed to remanufacture on-board computers designed for vehicles equipped with "immobilizer" passive anti-theft systems. In approving the regulation in December 2001, the Board decided against adopting regulatory language that would require motor vehicle manufacturers to make immobilizer information available to on-board computer remanufacturers. However, recognizing the importance of lower-cost, replacement on-board computers, the Board directed the staff to work with both industries towards finding a solution that would provide remanufacturers with the information or equipment necessary to effectively bench test these rebuilt computers without compromising motor vehicle security.

After considerable discussion with manufacturer and aftermarket stakeholders, it appears that a viable solution to the computer remanufacturing issue is available through the use of "generic" re-initialization technology required by the recently amended federal service information requirements. The ARB staff is proposing a similar requirement to ensure that the basis for reasonably priced bench testing of remanufactured on-board computers continues to be in place.

Other minor modifications are also being proposed to harmonize with federal service information requirements and to assist with the implementation and enforcement of the overall regulation.

Except for heavy-duty manufacturers that would become subject to the regulation under the staff's proposal, the amendments to the regulation should not impact compliance costs. The staff has estimated that heavy-duty manufacturers' start-up costs for the development of a compliant heavy-duty website should be no more than \$500,000. Annual maintenance costs are estimated to be approximately \$225,000 or less. Affected manufacturers would be permitted by the regulation to set fair, reasonable, and non-discriminatory prices for the tools and information that must be made available under the regulation, thereby offsetting some or all of the compliance costs.

State of California  
AIR RESOURCES BOARD

**Staff Report: Initial Statement of Reasons  
For Proposed Rulemaking**

**PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CALIFORNIA  
REGULATIONS FOR THE AVAILABILITY OF MOTOR VEHICLE SERVICE  
INFORMATION**

Date of Release: December 5, 2003  
Scheduled for Consideration: January 22, 2004

I. Introduction

Pursuant to the directives of Senate Bill (SB) 1146 (principally codified at Health and Safety Code Section 43105.5), the Air Resources Board (ARB or Board) adopted the California Motor Vehicle Service Information Regulation on December 13, 2001. The regulation ensures that independent service facilities and aftermarket part companies have access to information and tools necessary to diagnose and repair emission-related malfunctions and produce emission-related replacement parts. The regulation currently applies to manufacturers of 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with second generation on-board diagnostic (OBD) systems. The regulation became effective on March 30, 2003.

In adopting the regulation in 2001, the Board directed, in Resolution 01-05, that staff report back to it in two years with a status update on the regulation's implementation and on outstanding issues regarding the ability of the aftermarket industry to access "immobilizer" passive anti-theft system information. The status report follows in sections IV. and V.(A.) of this document. In addition, staff is proposing amendments to expand the regulation's applicability to heavy-duty vehicle engines and transmissions. Lastly, the staff is proposing additional minor amendments to the regulation to improve the clarity and effectiveness of the regulation and to ensure consistency with recently promulgated federal service information requirements.

II. Background

The use of sophisticated emission control devices has allowed motor vehicle manufacturers to meet stringent emission standards necessary for California's attainment of ambient air quality goals. However, continued compliance with these low emission levels depends on the proper operation of the emission control systems built into the vehicles. Emission-related malfunctions can cause vehicle emission levels to greatly exceed certification standards. Current light- and medium-

duty vehicles sold in California are equipped with diagnostic OBD systems (known as OBD that detect the occurrence of these malfunctions.

When a malfunction is detected, the "check engine" or "service engine soon" light illuminates on the vehicle's instrument panel, and diagnostic information is stored in the on-board computer. Through the rapid identification and repair of emission-related problems, the lifetime emissions from motor vehicles can be minimized. However, because emission levels are not reduced until the vehicle is successfully repaired, it is critical that service technicians have access to the information and diagnostic tools necessary to effectively utilize OBD system information, and to carry out necessary repair work for identified problems. The availability of compatible aftermarket replacement parts is also important to the repair process. If there is not an adequate supply of needed replacement parts at reasonable prices, the repair of emission-related malfunctions may be postponed or carried out improperly.

### III. Summary of Existing Regulation

Prior to the service information regulation, independent service facilities (i.e., those not directly affiliated with the vehicle manufacturers), did not always have access to dealership-quality information and tools. In response to concerns from aftermarket service facilities and parts manufacturers, SB 1146 was signed into law on September 30, 2000. The bill and the ARB's regulation, as codified in title 13, California Code of Regulations (CCR), section 1969 and title 17, CCR, sections 60060.1 through 60060.34, currently address service information availability for 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with OBD systems.

#### A. Service Information

Most emission-related service information needed by independent service facilities and aftermarket part manufacturers consists of text-based information routinely used to complete service and repairs on consumer vehicles. Such information includes, but is not limited to, service manuals, technical service bulletins, troubleshooting manuals, and training materials. The regulation requires manufacturers to make available all emission-related service information that is available to franchised dealerships. The regulation specifically requires that text-based service information, at a minimum, be made available directly via the Internet.

#### B. On-Board Diagnostic System Descriptions

The regulation requires motor vehicle manufacturers to make available for purchase general descriptions of the design and operation of OBD systems for 1996 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles. These descriptions include the system's monitored parameters, diagnostic trouble codes, enabling conditions, monitoring sequence, and malfunction thresholds. Motor vehicle manufacturers must also make available identification and scaling information necessary to understand and interpret data accessible to generic scan tools under "mode 6" of the Society of Automotive Engineers (SAE) standard

J1979. This information helps service technicians better understand the conditions under which malfunctions are indicated. It also provides aftermarket part manufacturers with information that can be used to better ensure that both add-on and replacement parts are compatible with OBD systems.

### C. Diagnostic Tools and Reprogramming Equipment

The regulation requires manufacturers to offer for sale the same emission-related diagnostic tools that are provided to franchised dealerships. This ensures the availability of dealership-quality tools to the aftermarket and provides for improved diagnoses and repair of emission-related malfunctions. If a manufacturer's tool includes both emission-related and non-emission-related information and diagnostic capabilities, the manufacturer has the option to make available to the aftermarket a version with only emission-related diagnostic functions.

In addition to offering for sale diagnostic tools that are provided to dealerships, the regulation requires motor vehicle manufacturers to make available emission-related enhanced data stream information<sup>1</sup> and bi-directional control information<sup>2</sup> to aftermarket tool manufacturers. This information enables automotive diagnostic tool manufacturers to incorporate similar functionality into their "generic" tools.

### D. Immobilizer Information

Motor vehicle manufacturers are required to make available to the service and repair industry initialization procedures used by dealerships for vehicles equipped with integrated anti-theft systems known as immobilizers. A manufacturer is required to provide such procedures when necessary for installation of on-board computers, or for repair or replacement of other emission-related parts. An exemption from full compliance with this requirement may be granted through the 2007 model year if the manufacturer demonstrates that it needs the additional time to make design changes to the immobilizer system in order to ensure that disclosure of the procedures would not compromise vehicle security. Only one manufacturer has requested an exemption thus far. An issue related to the release of additional immobilizer information to rebuilders of on-board computers has been a concern since the December 2001 hearing. Background on this matter, and the ARB's proposals regarding the issue are detailed later in this staff report.

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<sup>1</sup> "Enhanced data stream information" is defined as data stream information that is specific for an original equipment manufacturer's brand of tools and equipment. Data stream information available to technicians through a diagnostic tool typically consists of real time data from sensors and the on-board computer regarding the operating conditions of the vehicle.

<sup>2</sup> "Bi-directional control information" typically consist of commands issued by a technician using a scan tool to override normal vehicle operation in order to activate a device or computer routine for diagnostic purposes.

### E. Cost of Service Information

The regulation requires that all covered information and diagnostic tools be offered for sale at "fair, reasonable, and nondiscriminatory prices" in order to stimulate competition between franchised dealerships and the aftermarket, and to ensure equal access to service information and tools. Actual prices for service information and tools are not specified by the ARB in the regulation. Instead, the factors listed below are to be used to evaluate the appropriateness of manufacturer's pricing policies:

- The net cost to the motor vehicle manufacturers' franchised dealerships for similar information obtained from motor vehicle manufacturers after considering any discounts, rebates or other incentive programs;
- The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing, implementing, upgrading or altering the onboard computer and its software or any other vehicle component. Amortized capital costs may be included;
- The price charged by other motor vehicle manufacturers for similar information;
- The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000;
- The ability of an average covered person to afford the information;
- The means by which the information is distributed;
- The extent the information is used in general and by specific users, which includes the number of users, and the frequency, duration, and volume of use;
- Inflation; and,
- Any additional criteria or factors considered by the United States Environmental Protection Agency (U.S. EPA) for the determination of service information costs under federal regulations.

The ARB staff will consider all relevant regulatory factors in making any determination that a manufacturer's set prices are not fair, reasonable, and non-discriminatory. Manufacturers must provide its pricing structures to the ARB, and periodic audits are conducted by the ARB to monitor manufacturer pricing policies.

### F. Trade Secret Disclosure

The regulation contains provisions for manufacturers to withhold trade secret information that would otherwise have to be disclosed under the provisions of SB 1146. The regulation permits manufacturers to initially withhold information that it believes to be trade secret (as defined in the Uniform Trade Secret Act contained in title 5 of the California Civil Code). At the time information for vehicle models is made available, the motor vehicle manufacturer is required to identify on the website the information it has withheld as trade secret. Covered persons that believe the information is not a trade secret may request the motor vehicle manufacturer in

writing to make the information available. If resolution cannot be reached informally, the motor vehicle manufacturer would be required to petition the California superior court to obtain an exemption from disclosure.

#### G. Compliance Review Procedures

The regulation allows the ARB to review a motor vehicle manufacturer's compliance with these regulations by conducting periodic audits of motor vehicle manufacturer websites. A covered person may also request that the ARB conduct an audit. The ARB will conduct the audit if: (1) the request, on its face, establishes reasonable cause to believe that the manufacturer is in noncompliance with the regulation, and (2) the covered person has made reasonable efforts to resolve the matter informally with the manufacturer. In conducting audits, the ARB reviews all pertinent information provided by the covered person and the manufacturer. At the conclusion of the audit, the ARB will issue a written determination as to whether the motor vehicle manufacturer is in compliance with the statute and regulations.

If the ARB makes a determination that the motor vehicle manufacturer is not in compliance with the governing statute or regulation, a notice to comply will be issued to the motor vehicle manufacturer ordering it to remedy the non-compliance. The motor vehicle manufacturer has 30 days to either submit a compliance plan or request an administrative hearing to contest the notice. Any rejection of a manufacturer's compliance plan requires the Executive Officer to seek review of its determination by an administrative hearing officer.

#### H. Administrative Hearing Procedures

Health and Safety Code section 43105.5(f) requires the ARB to establish administrative hearing procedures for the review of Executive Officer determinations of non-compliance with the regulation. The hearing procedures for this purpose are provided in title 17, CCR, sections 60060.1 through 60060.34. After considering the record and arguments submitted by the parties, a hearing officer issues a written decision and order within 30 days. The hearing officer's decision is considered the final decision of the ARB, subject to review by the superior court.

#### I. Non-Compliance Penalties

The regulation authorizes the hearing officer to assess civil penalties against a manufacturer for continued noncompliance. Such penalties may be assessed if the manufacturer fails to come into compliance within 30 days from the date of a hearing officer's compliance order, or such later date that the hearing officer deems appropriate. The penalties can be as high as \$25,000 per violation per day that the violation continues.

#### IV. Status of Implementation

Currently, all major light- and medium-duty vehicle manufacturers have operational service information websites on the Internet. Most manufacturers offer time-based

subscriptions that range in length from 24 hours to a year. Eight manufacturers charge for service information per document, and two manufacturers are currently offering free access to emissions-related service information. Table 1 below contains a list of manufacturers' websites and access charges:

**Table 1.**  
**Service information Websites**  
**(as of November 2003)**

<u>Manufacturer</u>	<u>Website Address</u>	<u>Pricing</u>		
		<u>Short-Term</u>	<u>Month</u>	<u>Year</u>
Acura	<a href="https://www.serviceexpress.honda.com">https://www.serviceexpress.honda.com</a>	\$20.00 (72 hr)	\$50.00	\$500.00
AM General*	<a href="http://www.amgeneralcorp.com">http://www.amgeneralcorp.com</a>	Documents Individually Priced		
Audi	<a href="http://erwin.audi.com">http://erwin.audi.com</a>	Documents Individually Priced		
BMW	<a href="http://www.bmwtechinfo.com">http://www.bmwtechinfo.com</a>	\$20.00 (24 hr)	\$300.00	\$2,500.00
Bentley*	<a href="http://www.bentleytechinfo.com">http://www.bentleytechinfo.com</a>	Documents Individually Priced		
Chrysler	<a href="http://www.techauthority.com">http://www.techauthority.com</a>	\$20.00 (24 hr)	\$200.00	N/A
Ferrari*	<a href="http://www.ferrariusa.com">http://www.ferrariusa.com</a>	Documents Individually Priced		
Ford	<a href="http://www.motorcraftservice.com">http://www.motorcraftservice.com</a>	\$19.95 (72 hr)	\$299.95	\$2,499.95
General Motors	<a href="http://service.gm.com">http://service.gm.com</a>	\$20.00 (24 hr); \$45.00 (5 day)	\$150.00	\$1,200.00
Honda	<a href="https://www.serviceexpress.honda.com">https://www.serviceexpress.honda.com</a>	\$20.00 (72 hr)	\$50.00	\$500.00
Hyundai	<a href="http://www.hmaservice.com">http://www.hmaservice.com</a>	Free		
Infiniti	<a href="http://www.infinititechinfo.com">http://www.infinititechinfo.com</a>	\$19.99 (24 hr)	\$299.98	\$2,499.98
Isuzu	<a href="http://www.isuzusource.com">http://www.isuzusource.com</a>	\$20.00 (24 hr)	\$150.00	\$1,650.00
Jaguar	<a href="http://www.jaguartechinfo.com">http://www.jaguartechinfo.com</a>	\$20.00 (24 hr)	\$150.00	\$500.00
Kia	<a href="http://www.kiatechinfo.com">http://www.kiatechinfo.com</a>	Free		
Lamborghini*	<a href="http://www.lamborghini.com">http://www.lamborghini.com</a>	Documents Individually Priced		
Land Rover	<a href="http://www.landrovertechinfo.com">http://www.landrovertechinfo.com</a>	\$20.00 (24 hr)	\$150.00	\$500.00
Lexus	<a href="http://techinfo.lexus.com">http://techinfo.lexus.com</a>	\$10.00 (24 hr)	\$50.00	\$350.00
Mazda	<a href="http://www.mazdatechinfo.com">http://www.mazdatechinfo.com</a>	19.95 (24 hr), \$50.00 (72 hr)	\$900 (6 mo)	\$1,500.00
Maserati*	<a href="http://www.maseratiusa.com">http://www.maseratiusa.com</a>	Documents Individually Priced		
Mercedes-Benz	<a href="http://www.startekinfo.com">http://www.startekinfo.com</a>	\$20.00 (24 hr)	\$300.00	\$2,500.00
Mini	<a href="http://www.minitechinfo.com">http://www.minitechinfo.com</a>	\$20.00 (24 hr)	\$300.00	\$2,500.00

<u>Manufacturer</u>	<u>Website Address</u>	<u>Pricing</u>		
		<u>Short-Term</u>	<u>Month</u>	<u>Year</u>
Mitsubishi	<a href="http://www.mitsubishitechinfo.com">http://www.mitsubishitechinfo.com</a>	\$19.95 (24 hr); \$99.95 (1 wk)	\$249.99; \$999.99 (6 mo)	\$1,499.95
Nissan	<a href="http://www.nissantechinfo.com">http://www.nissantechinfo.com</a>	\$19.99 (24 hr)	\$299.98	\$2,499.98
Porsche	<a href="https://techinfo.porsche.com">https://techinfo.porsche.com</a>	\$110/document	N/A	\$5,200.00
Rolls-Royce*	<a href="http://www.rrtis.com">http://www.rrtis.com</a>	Documents Individually Priced		
Saab	<a href="http://www.saabtechinfo.com">http://www.saabtechinfo.com</a>	\$10.00	\$75.00; \$180.00 (3 mo)	\$500.00
Subaru	<a href="http://techinfo.subaru.com">http://techinfo.subaru.com</a>	\$19.95 (72 hr)	\$299.95	\$2,499.95
Suzuki	<a href="http://www.suzukitechinfo.com">http://www.suzukitechinfo.com</a>	\$19.99 (24 hr)	\$99.99; \$299.99 (6 mo)	\$499.99
Toyota	<a href="http://techinfo.toyota.com">http://techinfo.toyota.com</a>	\$10.00 (24 hr)	\$50.00	\$350.00
Volkswagen	<a href="https://erwin.volkswagen.de">https://erwin.volkswagen.de</a>	Documents Individually Priced		
Volvo	<a href="http://www.volvotechinfo.com">http://www.volvotechinfo.com</a>	N/A	\$350.00	\$3,500.00

\* Small volume manufacturer. Information is not required to be made available for online purchasing and viewing/downloading.

Overall, staff has found that the service information websites generally meet the requirements outlined in the regulation despite some minor startup problems. Thus far, the ARB staff has received only two complaints from covered persons regarding manufacturers' compliance with the regulation. The first involved the pricing of a motor vehicle manufacturer's service information and the other was about the inability of an independent service facility to purchase a manufacturer's enhanced diagnostic tool. Both matters were resolved informally without the need to pursue enforcement procedures outlined in the regulation.

## V. Proposed Amendments

This section of the report describes the staff's proposed amendments to California's service information requirements. The staff's preliminary proposals were presented in ARB Mail-Out MSO #2003-03, and discussed at a public workshop held on August 14, 2003.

### A. Immobilizers

ARB staff has worked closely with both motor vehicle manufacturers and representatives from the aftermarket towards resolving an issue regarding access to immobilizer information that was identified at the 2001 Board hearing.

## 1. Background

Most vehicle manufacturers currently install passive anti-theft devices, known as immobilizers, on at least a portion of their product offerings. These devices disable engine functions necessary for vehicle operation (e.g., fuel injection, or the ignition system) unless a transmitting device incorporated into the key sends the correct password to a receiver on the vehicle. If the vehicle's on-board computer needs to be replaced, the immobilizer system typically needs to be reinitialized so that the computer will recognize the code transmitted by the key. Other emission-related repairs may also require reinitialization of the immobilizer system.

Pursuant to Health and Safety Code section 43105.5 (a)(6), the service information regulation requires manufacturers to make their initialization procedures available to independent service technicians so that they will not be precluded from carrying out emission-related repair procedures that require immobilizer initialization (title 13, CCR, section 1969 (d)(3)). The aftermarket, however, believes that the regulation, as presently written, does not go far enough. They believe that remanufacturers of on-board computers (ECUs) are also entitled to special information and/or tools needed to temporarily bypass the ECU's immobilizer logic so that all on-board computer functions can be tested on a workbench after the remanufacturing process. Without such capabilities, the remanufacturers assert that they would be unable to continue to supply lower-cost, replacement on-board computers. Therefore, the only alternative for consumers would be new, more expensive replacement units available through manufacturers' dealerships.

Vehicle manufacturers disagree, contending that SB 1146 does not provide for special information to be created and made available to ECU remanufacturers. They assert that such a requirement could result in the release of information that would jeopardize the effectiveness of immobilizer systems in deterring vehicle theft.<sup>3</sup> They further argue that the development of the specific information and tools desired by the remanufacturers would be costly and burdensome.

At the 2001 hearing, the staff's proposal to the Board did not include the special information requirements sought by the aftermarket remanufacturers. The staff concluded that the language of Health and Safety Code section 43105.5, when read together with the legislative history of SB 1146, did not require vehicle manufacturers to provide special initialization information necessary for bench testing remanufactured computers. After considerable discussion at the hearing, the Board adopted staff's proposed regulations without the requirement sought by remanufacturers. However, the Board expressed concerns about the continued availability of lower cost replacement ECUs. Consequently, the Board directed ARB staff to work with aftermarket and vehicle manufacturer stakeholders to determine if

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<sup>3</sup> The effectiveness of immobilizer designs is one criterion by which vehicle insurance costs are established in Europe. Motor vehicle manufacturers have stated that they use similar or identical immobilizer designs in the U.S. and Europe. Therefore, manufacturers argue that any release of information that could jeopardize immobilizer system effectiveness could translate into higher insurance costs for their vehicles overseas.

a feasible solution exists that would better facilitate bench testing of remanufactured on-board computers while protecting the security of immobilizer designs.

## 2. Discussion of Potential Solutions

### *Black Boxes, and Test Calibrations*

Since the 2001 Board hearing, the ARB staff has engaged in continuing discussions and meetings with representatives from the on-board computer remanufacturing industry and motor vehicle manufacturers. Initial discussions focused on concepts proposed by computer remanufacturers. Specifically, the remanufacturers proposed that they be provided with "black box" devices that could be used on a test bench to disable immobilizer logic without providing the user of the device with any proprietary information on how the immobilizer works. Another concept discussed would be for vehicle manufacturers to develop special computer software that could be installed into remanufactured computers for testing purposes. The software would bypass immobilizer logic to allow for bench testing of the computer, but its parameters would be calibrated in a way that would keep the engine from operating reasonably if the computer was installed in a vehicle with the test software loaded. Vehicle manufacturers countered that black boxes and test calibrations would be expensive and burdensome to develop, and that they do not address concerns about reducing the effectiveness of immobilizer systems in-use.<sup>4</sup>

Potential solutions similar to the test calibration concept have also been discussed for application to future model year vehicles. These solutions would require manufacturers to develop special immobilizer-related subroutines into production release software that would disable the immobilizer's functions under very narrow operating conditions or in response to a command from a diagnostic scan tool. Manufacturers agree that such strategies are technically feasible and that focusing on future model year vehicles would reduce costs; however, they remain concerned that costs to develop and maintain these subroutines would be significant. They are also concerned, once again, that the subroutines may be exploited in the field to reduce the anti-theft effectiveness of their immobilizer strategies.

### *Manufacturer-Authored Bench Test Procedures*

Vehicle manufacturers have offered a solution that is based on the procedures the service industry uses, which are already available under the regulation to initialize the immobilizer system when an ECU is replaced or when additional keys are made for a vehicle. The manufacturers would provide instructions to the ECU remanufacturers on how to set up a test bench by connecting together a vehicle's critical immobilizer-related devices. Such a setup would typically include the receiver for the key's signal, the ECU, the anti-theft

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<sup>4</sup> These concepts were presented to the Board in more detail in a memorandum from the Executive Officer, dated November 13, 2002, "California Motor Vehicle Service Information Rulemaking Status (Agenda Item No. 01-10-1): Immobilizers"

module (if separate from the ECU), the manufacturer's diagnostic scan tool, and necessary wiring between the devices. With the test bench, a remanufacturer would be able to initialize the immobilizer system in the same way a service technician would when making vehicle repairs.

ECU remanufacturers have two related concerns regarding the manufacturers' proposal. First, some manufacturers' immobilizer initialization procedures incorporate a waiting period of up to 30 minutes to make use of the procedure to steal a car impractical. Remanufacturers say the delay greatly reduces the volume of computers that can be tested on the bench, restricting their ability to carry out their business. The impact of the delay can be avoided by setting up multiple test benches that would work in parallel. However, remanufacturers say their second concern, the cost of creating a test bench, makes the idea of setting up multiple benches economically infeasible.

The primary cost associated with the test bench setup is the need for a manufacturer's scan tool, which can often be in excess of \$5,000 each. However, a requirement recently finalized by the U.S. EPA with respect to federal service information rules will eliminate the need for expensive dealer tools. The federal requirement (Title 40, Code of Federal Regulations, Part 86, section 86.096.38(g)(6)) requires vehicle manufacturers to develop service procedures for immobilizer initialization that do not require the use of manufacturer scan tools or other special tools. Instead, the manufacturers are to rely on generic aftermarket tool capabilities, the SAE J2534 "pass through" reprogramming platform<sup>5</sup>, or inexpensive manufacturer specific data cables. While the federal provision was not adopted for the benefit ECU remanufacturers, they will be able to take advantage of generic tools that vehicle manufacturers will be required to provide. This should enable the ECU remanufacturers to perform multiple bench tests that facilitate remanufacturing and testing of computers in reasonable volumes and at reasonable cost.

The U.S. EPA requirement applies to 1996 and later model year vehicles that use immobilizers. Like the ARB's service information regulation, the federal rulemaking provides for an exemption through the 2007 model year for manufacturers that can demonstrate that development of a immobilizer initialization procedure based on common tools will increase the chances of vehicle theft. To date, the U.S. EPA has received four exemption requests. These four manufacturers account for only approximately 16 percent of light- and medium-duty vehicle sales in California. Therefore, in addition to current and future model year vehicles, the generic initialization concept can be used for a wide range of existing vehicle models.

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<sup>5</sup> Title 13, CCR, Section 1969(f)(3)

### 3. Summary and Proposals

At this time, staff believes that manufacturer bench test initialization procedures using commonly available tools appears to offer a reasonably priced and acceptably practical method to facilitate bench testing of remanufactured computers. The staff believes that refinements to such procedures and the tools needed to carry them out will likely occur over time, further reducing associated costs and resources. The staff also believes that other and possibly more efficient solutions to this issue may be reached through continued cooperation between vehicle manufacturers and on-board computer remanufacturers.

The staff's proposed regulatory amendments include regulatory language similar to the federal requirements discussed above to further ensure the availability of common tools to carry out immobilizer initialization (title 13, CCR, section 1969(d)(3)). Such tools are key to reducing the cost and burden of bench test procedures based on immobilizer-related vehicle repair procedures. The tools will also help to minimize immobilizer-related costs within the vehicle service industry.

#### B. Heavy-Duty Engine/Vehicle Applicability

##### 1. Background

In October 2001, the ARB adopted new emission standards for on-road heavy-duty engines and vehicles<sup>6</sup> that will reduce oxides of nitrogen and particulate matter by 90% compared to 2004 emission standards. Compliance with the 2007 standards will require manufacturers to implement sophisticated emission controls on new engines including aftertreatment-based technologies such as particulate filters and lean oxides of nitrogen (NOx) catalysts. Manufacturers will also be required to implement crankcase filtering/ventilation technologies.

Similar to the light-duty, gasoline-powered fleet in California, achievement of maximum in-use reductions from these emission control technologies will depend on their continued proper performance throughout the actual life of the engines. The ARB staff is currently in the process of developing separate OBD requirements for heavy-duty vehicles meeting these stringent standards to ensure that emission-related malfunctions are properly identified and repaired. A proposed rulemaking is expected to occur in 2004.

##### 2. Need for Service Information Access

With the coming reliance on advanced emission controls and on-board diagnostic systems, the need for accurate and complete emissions-related service information, and access to adequate diagnostic tools has become more critical. To address this need and the requirements of Health and Safety Code section 43105.5,

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<sup>6</sup> Pursuant to title 13, CCR, section 1900(a)(6), heavy-duty vehicles are defined as motor vehicles with a gross vehicle weight rating (GVWR) greater than 14,000 pounds.

the ARB staff is proposing that California's service information requirements be amended to include heavy-duty, OBD-equipped engines and transmissions used with such engines.

ARB staff estimates based on available Department of Motor Vehicles data that approximately 520,000 heavy-duty trucks are registered in California. Federal statistics indicate that only about 11 percent of general heavy-duty truck maintenance and about 24 percent of major overhauls are performed at manufacturers' dealerships. Independent garages and fleet maintenance facilities conduct the majority of such repair work.<sup>7</sup> Therefore, although heavy-duty vehicles make up only 2 to 3 percent of California's on-road vehicle fleet, hundreds of thousands of heavy-duty vehicles rely on service providers not affiliated with dealerships.

Independent heavy-duty service industry stakeholders have indicated that access to service and parts information electronically, and specifically over the Internet, is important to facilitate efficient heavy-duty vehicle repair work. The American Trucking Association's Technology and Maintenance Council (TMC) conducted a survey in which 86 percent of respondents indicated that technicians spent too much time trying to find service and parts information. Nearly 90 percent responded that a single source of on-line service and parts information would be an important improvement to their service repair work.

Input received by ARB staff during its August 14, 2003, public workshop indicates that heavy-duty engine and transmission manufacturers typically make service information available in hard-copy and/or electronic formats to independent service providers. Further, with a few exceptions, information regarding diagnostic tool functionality is also shared on a wide scale. Expanding the applicability of California's service information requirements to these vehicles would ensure that emissions-related information and tools are available for all California trucks.

### 3. Authority

The directives of the Health and Safety Code, and specifically SB 1146, require that the provisions of title 13, CCR, section 1969 be broadened to include OBD-equipped, heavy-duty vehicles. Health and Safety Code Section 43105.5(a) provides that the service information regulation apply to "all 1994 and later model-year motor vehicles equipped with on board diagnostic systems...and certified in accordance with the test procedures adopted [by the ARB]." While SB 1146 refers only to "motor vehicles" and "motor vehicle manufacturers," and does not reference "engines" or "engine manufacturers," the engine manufacturer is the party primarily responsible for equipping a manufactured vehicle with an OBD system and for certifying the engine and OBD system with the ARB. Being the certifying manufacturer of the vehicle's engine, engine manufacturers develop and control most emissions-related service information and tools used to maintain and repair heavy-duty vehicles.

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<sup>7</sup> United States Census Bureau: "1997 Economic Census Vehicle Inventory and Use Survey."

The purpose and intent of SB 1146 is to ensure the availability of service information and tools to the aftermarket service and parts industry for the proper maintenance and repair of OBD-equipped vehicles at competitive and reasonable prices. It is unquestionable that the sophistication of OBD systems – whether incorporated as part of a light, medium, or heavy-duty vehicle – and their impact on vehicle servicing and aftermarket parts was the catalyst for the widespread and strong support of SB 1146 from the automotive aftermarket. Moreover, the service information rule as initially adopted in 2001 applies to both light- and medium-duty vehicles, the latter of which includes several engine-certified vehicles. At that time, engine manufacturers never objected to the inclusion of such engine-certified vehicles in the service information regulation.

Beyond the explicit authority set forth in SB 1146, Health and Safety Code sections 43000.5(d), 43018(a), and 43700(d) direct the ARB to obtain maximum emission reductions from heavy-duty vehicles at the earliest practicable date. These provisions specifically recognize the unique emissions contribution of heavy-duty vehicles to the state's air quality problem. Providing necessary information and tools to independent heavy-duty vehicle service facilities will enable California-certified, heavy-duty vehicles to be better maintained and capable of continuing to meet the increasingly stringent certification emission standards in-use. This will help ensure that such emission reductions are indeed being achieved and maintained.

#### 4. Differences in the Heavy-Duty Industry

Staff recognizes that differences do clearly exist in how most heavy-duty vehicles are constructed and serviced as compared to light- and medium-duty vehicles. Engine and transmission manufacturers have commented that these differences need to be taken into account in attempting to apply the current service information requirements to heavy-duty vehicles.

As compared to the light-duty motor vehicle industry, the heavy-duty industry is mostly non-integrated. This means that separate manufacturers typically produce the engine, transmission, and chassis of a vehicle. Non-integration exists primarily because the completed vehicle is typically produced in response to owner/operator specifications and preferences. Because of this lower level of integration, heavy-duty vehicles, in contrast to light-duty cars and trucks, are more often serviced by repair facilities that specialize in various subparts of the truck (engine shops, transmission shops, etc.).

The lack of integration also means that a given engine model will ultimately be part of many different engine, transmission, and chassis combinations. Heavy-duty manufacturers have stated that diagnostic tool designs differ significantly from tools produced for light-duty vehicles as a result of this diversity. Specifically, the tools provide a wide array of user selectable options that permit technicians to optimize truck operation based on factors such as the engine and transmission combination, axle ratios, and wheel sizes. It is important for service technicians to

understand how to properly utilize this flexibility. The manufacturers state that improper selection of configuration options can degrade truck performance to the point where on-road safety is at issue. For this reason, engine and transmission manufacturers have told the ARB staff that special training is considered essential for technicians using heavy-duty vehicle diagnostic equipment. Most manufacturers currently require service providers to complete such training before they will sell them their diagnostic tools. Finally, the industry standards by which the tools and reprogramming equipment communicate with heavy-duty vehicles are also different from those developed for light-duty vehicles.

#### 5. Proposals for Inclusion of Heavy-Duty Vehicles

The ARB staff is proposing to expand the applicability of title 13, CCR, section 1969 to include heavy-duty engine, vehicle, and transmission manufacturers. Implementation of the requirements would not be mandatory until such time that heavy-duty engines are certified to meet OBD requirements. OBD requirements for heavy-duty vehicles are currently under consideration. Although the ARB's proposals are still in the development phase, it is not expected they will be implemented prior to the 2007 model year.

The scope of the proposed service information regulation as it applies to heavy-duty vehicles is limited to emissions-related information and tools. Engine manufacturers would be responsible for complying with the bulk of the regulation, providing access to text-based service information, OBD descriptions, reprogramming information, and diagnostic tools. Transmission manufacturers would be responsible only for information and tools that deal with OBD-related transmission components and subsystems (e.g., transmission shift solenoids or transmission speed sensors).

With respect to diagnostic tools and reprogramming equipment, the staff's proposal for heavy-duty manufacturers is largely similar to the current requirements for light- and medium-duty vehicles. That is, the manufacturers would be required to make available for sale the diagnostic tools and equipment that they provide to their dealerships, and they would also be required to provide aftermarket tool and equipment companies with data stream and bi-directional control information so that companies will be able to develop the same functionality into their own tools. In recognition of manufacturers' concerns regarding the impact of potential misuse of such tools and equipment, the staff is proposing regulatory language that would permit heavy-duty engine and transmission manufacturers to require certain terms be met before its tools, equipment, and data stream and bi-directional control information can be purchased. Prior to the sale of enhanced tools and equipment to covered persons, heavy-duty manufacturers may require that they participate in training on use of its tools and equipment, comparable to the training programs the manufacturer may now offer to its authorized service networks. As a condition of purchase of enhanced data stream and bi-directional control information, engine and transmission manufacturers may also require that aftermarket tool and equipment manufacturers provide mandatory training to ultimate purchasers of the tools and equipment that use the manufacturer's

information. Such training may include instruction on the proper handling of the tool and equipment as it applies to the engine or transmission at issue.

In order to minimize costs for equipment necessary to reprogram on-board computers, the ARB's service information regulation requires, for light- and medium-duty vehicles, that manufacturers comply with the SAE J2534 industry standard, "Recommended Practice for Pass-Thru Vehicle Programming."<sup>8</sup> Heavy-duty manufacturers have stated that their segment of the industry has developed its own standard (TMC Recommended Practice RP1210A, "Windows™ Communication API") for reprogramming, and that any requirement for standardized reprogramming of heavy-duty vehicles should be based on this standard. The ARB staff agrees that there is no need for the reprogramming standards for the light- and heavy-duty vehicle fleets to be the same since the vehicles are typically not serviced at the same location. Further, the RP1210A standard is already in use and familiar to the heavy-duty service industry. Therefore, the staff is proposing that the heavy-duty reprogramming standard be incorporated by reference in the regulation for use by heavy-duty manufacturers. For the same reasons, the staff is also proposing that heavy-duty manufacturers be permitted to use the terms and acronyms specified in SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," for heavy-duty service literature instead of SAE J1930, which specifies terms and acronyms for light- and medium-duty service information.

ARB staff's proposal would require direct access to heavy-duty service information over the Internet, as is presently required for light- and medium-duty vehicle classes currently covered by the regulation. Staff believes the advantages offered by online access (i.e., quick and convenient access) are beneficial and desired by independent heavy-duty service providers and parts makers. Such online access to service information is specifically required by SB 1146.<sup>9</sup> Heavy-duty engine and transmission manufacturers already offer direct online access to at least some of their service information and others offer the ability to order service publications online.<sup>10</sup> Current provisions for small-volume exemptions from full Internet compliance would also be extended to heavy-duty engine and transmission manufacturers selling on average less than 300 units annually in California.

Costs associated with the staff's proposal for heavy-duty vehicles are discussed in section VI.(C.)(2.) of this staff report.

### C. Other Amendments

Other minor amendments are proposed by the staff to harmonize the ARB's regulation with federal service information requirements and to assist the ARB in the implementation and enforcement of its own regulation. The more significant

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<sup>8</sup> Title 13, CCR, Section 1969(f)(3)

<sup>9</sup> Health and Safety Code Section 43105.5(a)(1)

<sup>10</sup> Examples include Detroit Diesel ([www.detroitdiesel.com/public/ddc\\_cust/ddc\\_cust.asp](http://www.detroitdiesel.com/public/ddc_cust/ddc_cust.asp)), Mack ([www.macktrucks.com](http://www.macktrucks.com)), and Allison Transmissions ([www.allisontransmission.com/service](http://www.allisontransmission.com/service))

amendments are summarized below. All proposed amendments are indicated in the draft regulatory language in the attachment to this report.

1. Monitor Specific Drive Cycles

The existing service information regulation in title 13, CCR, section 1969(d)(2)(C) requires motor vehicle manufacturers to provide descriptions of typical enabling criteria for OBD monitors. The staff is proposing an amendment that would also require manufacturers to provide monitor-specific OBD drive cycle information, when available, for all major OBD diagnostic strategies. The information will help technicians verify repair work by exercising the OBD system during a test drive. Based on input from technicians, the staff believes that both types of information, when available, are needed. Verification of repair work before a vehicle is released to the owner maximizes the emission benefits of the work and increases public confidence in the effectiveness of the OBD system. Depending on the equipment used by the technician and the types of streets that surround the service facility, one type of OBD monitor information may be more useful than the other. The U.S. EPA's service information rule requires both types of information to be provided when available.

2. Emergency Maintenance

In Mail-Out MSO #2003-03, the staff proposed to add language to title 13, CCR, section 1969(e)(2)(A) requiring manufacturers to notify the Executive officer if emergency maintenance becomes necessary. The requirement would allow the ARB to monitor the nature and expected timeframe of the maintenance and to field inquiries about it. Manufacturers were concerned with the proposal because some manufacturers have global servers located outside of the U.S., making immediate notification for emergency maintenance difficult. Manufacturers also feared that the ARB might unreasonably impose penalties on manufacturers because of the amendment. Questions as to what constitutes emergency maintenance and whether notification would benefit independent technicians were also raised. The industry submitted suggested regulatory language that addresses manufacturers' concerns but still provides the ARB with reasonable notification of significant website downtime. The staff concluded that the suggested language is acceptable and has incorporated it into its proposal. Under the revised language, manufacturers would notify the ARB within one business day if their websites are not available for more than 24 hours for reasons besides routine maintenance.

3. Definition of "Fair, Reasonable, and Nondiscriminatory Price"

The existing definition of "fair, reasonable, and nondiscriminatory price" in title 13, CCR, section 1969(c)(10)(I) includes a factor that considers additional criteria that the U.S. EPA may use for evaluating service information and tool costs. It was included to account for differences in the federal and California requirements for pricing that were present when the ARB proposed its original regulation in 2001. However, with the federal rulemaking now finalized with pricing factors identical to

those of California's, the staff proposes to delete the factor from the state's regulation.

#### D. Differences Between Federal and California Regulations

The ARB has worked with the U.S. EPA to ensure general consistency between state and federal service information requirements. Except for the inclusion of heavy-duty vehicles into California's requirements, the amendments proposed by the staff will further improve consistency between the two regulations. With the proposed amendment for heavy-duty vehicles, the ARB's regulation would be broader in scope than the federal regulation. However, no conflicts between state and federal requirements would be created.

### VI. Air Quality, Environmental and Economic Impacts

#### A. Air Quality and Environmental Impacts

The proposed regulation will have a positive impact on air quality by providing independent heavy-duty service facilities with the tools and information necessary to effectively diagnose and repair emission-related malfunctions. However, instead of creating new emission reductions, the proposed regulation will help ensure that the emission benefits attributed to California's heavy-duty emissions standards and future heavy-duty OBD requirements will be fully realized. This benefit is based on the belief that the availability of convenient and reasonably priced service will cause owners to be more likely to service their vehicles when malfunctions occur. The widespread availability of service information will also allow for more accurate repair work. For reference, the ARB has estimated the emission reductions of NO<sub>x</sub> and particulate matter (PM) statewide for ARB's 2007 heavy-duty emission standards to be 48.0 and 2.7 tons per day, respectively, by the year 2010.<sup>11</sup>

#### B. Environmental Justice

State law defines environmental justice as the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies (Senate Bill 115, Solis; Stats 1999, Ch. 690; Government Code § 65040.12(c)). The Board has established a framework for incorporating environmental justice into the ARB's programs consistent with the directives of State law. The policies developed apply to all communities in California, but recognize that environmental justice issues have been raised more in the context of low income and minority communities, which sometimes experience higher exposures to some pollutants as a result of the cumulative impacts of air pollution from multiple mobile, commercial, industrial, areawide, and other sources.

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<sup>11</sup> Source: ARB Staff Report: Initial Statement of Reasons, Public Hearing to Consider Amendments Adopting More Stringent Emission Standards for 2007 and Subsequent Model Year Heavy-Duty Diesel Engines, September 7, 2001.

Over the past twenty years, the ARB, local air districts, and federal air pollution control programs have made substantial progress towards improving the air quality in California. However, some communities continue to experience higher exposures than others as a result of the cumulative impacts of air pollution from multiple mobile and stationary sources and thus may suffer a disproportionate level of adverse health effects.

Since the same ambient air quality standards for heavy-duty vehicles apply to all regions of the State, all communities, including environmental justice communities, will benefit from the air quality benefits associated with the proposal. To the extent that heavy-duty truck operation is higher near certain communities, these communities will receive a greater benefit from a well maintained California fleet.

### C. Economic Impacts

The Administrative Procedures Act requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess the potential for adverse economic impacts on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states, and fiscal impacts on state and local agencies. Below is staff's assessment of the economic impacts of this proposal.

#### 1. Cost to State Agencies

When originally adopted, the ARB estimated that it would incur ongoing costs of up to \$200,000 annually to implement and enforce the service information regulation. Additionally, through 2009, the Department of Consumer Affairs will be required by Health and Safety Code section 43105.5(g), in conjunction with the ARB, to report to the State Legislature annually on the effectiveness of the regulation. The estimated cost to the Department of Consumer Affairs is not expected to exceed \$75,000 per year. The staff believes that no significant additional ARB resources will be required as a result of the amendments it has proposed. The proposed regulation is not expected to create additional costs to any other state agency, local district, or school district, including any federally funded state agency or program.

#### 2. Costs to Engine and Motor Vehicle Manufacturers

When ARB's service information requirements were first adopted in 2001, light and medium-duty manufacturers estimated that start up costs would be between \$600,000 to \$5 million. Ongoing costs were estimated at \$150,000 to \$450,000. The ARB staff estimates that both start-up and ongoing costs will be substantially less for heavy-duty manufacturers.

ARB staff does not believe that start-up costs for heavy-duty manufacturers should exceed \$500,000. Because the regulation applies to manufacturers of all 1994 and later OBD-equipped vehicles, light- and medium-duty

vehicle manufacturers were required to revise nine model years of existing service information for web access. Heavy-duty engine and transmission manufacturers will not need to address internet-based service information access for any models prior to the 2007 model year. Further, heavy-duty engine and transmission manufacturers have a smaller number of product offerings, compared to most light and medium-duty vehicle manufacturers. Therefore, hardware costs for development computers and Internet servers are also expected to be less.

Regarding ongoing costs, fewer product offerings should also lower heavy-duty manufacturers' ongoing service information access costs compared to light- and medium-duty vehicles. The staff estimates that on-going costs should not exceed \$225,000 per year. These cost estimates are generally consistent with limited cost data provided by heavy-duty engine manufacturers. The estimates do not take into account any revenue from online subscriptions or document purchases. Manufacturers are permitted to set reasonable prices for information access.

### 3. Potential Impacts on Other Businesses

The regulations should have a positive impact on independent service repair facilities and aftermarket manufacturers through the wider availability of emission-related service information and tools. Covered persons should only incur additional expenses as a result of this regulation if they choose to purchase additional information and tools. However, in doing so, it is assumed that the purchases will be based on business decisions wherein the use of the information would be expected to yield a profit. The cost of purchasing such information under the proposal should be equal to or less than the current costs for the aftermarket heavy-duty service industry.

Franchised heavy-duty truck dealerships and manufacturer service networks may experience some loss of business as independent facilities conduct more repairs using the service information that would be provided by this rulemaking. However, this stimulation of competition in the service and repair industry was in fact the goal of SB 1146 and thus, such an effect was clearly recognized by the California Legislature when the bill was drafted.

### 4. Potential Impact on Business Competitiveness

The proposed regulation is expected to have no net effect on the ability of California businesses to compete with businesses in other states. Adoption of the regulations would allow California independent service facilities to compete more evenly with manufacturer dealerships and service networks within the state as they will be able to access the same types of repair information. Since, for the most part, the competition between the aftermarket and franchised dealerships/service networks is of an intrastate origin, the regulation should have no effect on the ability of California businesses to compete with businesses in other states.

## 5. Potential Impact on Employment

The regulatory proposal would not likely result in the loss of jobs. In fact, it may create some jobs in California. Engine and vehicle manufacturers may have a new need for skilled employees that are capable of designing, creating, and maintaining service information websites. Further, although some business may move from dealerships and independent service providers, the staff does not expect any overall reduction in engine or vehicle repair work, and thus, no reduction in California jobs. To the extent that more competition in the service industry is achieved, lower prices and better service could offer an incentive for more vehicle owners to seek repairs, possibly resulting in increased employment.

### D. Regulatory Alternatives

#### 1. Maintain Existing Service Information Regulation

Staff rejected this alternative because the Health and Safety Code and SB 1146 mandate that the availability of emission-related service information be required for all 1994 model year and later vehicles equipped with OBD systems. Adoption of requirements at this time for heavy-duty vehicles will ensure that adequate service information is available once OBD requirements for these vehicles take effect.

The other proposed amendments are minor yet necessary to clarify regulatory language that is unclear and to assist the ARB in harmonizing its provisions with those of the U.S. EPA. They also assist the ARB in enforcing its own regulation. Therefore, their inclusion is necessary to maximize the effectiveness of the regulation.

#### 2. Adopt Federal Service Information Regulations

Adoption of the federal requirements would not fully address the responsibilities placed on the ARB by the California Legislature and SB 1146. SB 1146 specifically charged the ARB to develop its own service information regulation for California, with specific enforcement and reporting activities related to the service information regulation. These activities include issuance of notices to comply, participation in administrative hearings, and yearly reports to the legislature. The statute does not permit the ARB to consider relying on federal efforts to enforce U.S. EPA service information requirements.

Additionally, the U.S. EPA's service information regulation only applies to vehicles under 14,000 pounds GVWR and covers only the aftermarket service industry, and not parts manufacturers. Therefore, California-certified, heavy-duty vehicles and aftermarket parts manufacturers would not be covered if the state were to rely on the federal requirements.

### 3. Conclusion

Staff has determined that no feasible alternative considered would be more effective in carrying out the purpose of the proposed amendments. No alternative would be as effective or less burdensome to affected private persons than the proposed amendments to the regulation.

### VII. Summary and Staff Recommendation

The staff's proposal is necessary and required under SB 1146 to ensure wide access to emission-related service information and diagnostic tools for future heavy-duty vehicles equipped with OBD systems. The amendments in this proposal will create a suitable environment for independent businesses in California to compete with engine and vehicle manufacturers and their dealerships or service networks for consumers' business when it comes to the repair of their vehicles. The widespread availability of emission-related service information to all service repair facilities would ensure that repair work is accurate, thorough, and complete, thereby providing all of California's citizens with the air quality benefits associated with properly maintained vehicles. Aftermarket parts manufacturers will also be able to use the required information to produce components that will work compatibly with the advanced emission control systems of today's cars and trucks.

The regulation duly provides for the disclosure of service information as envisioned by the State Legislature when SB 1146 was signed into law. Consequently, staff recommends that the Board adopt the proposed amendments to the service information regulations as outlined in title 13, CCR, section 1969.

### VIII. References

SAE, "Surface Vehicle Recommended Practice, Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms," J1939, May 1998.

SAE, "Surface Vehicle Recommended Practice, E/E Diagnostic Test Modes," J2403, Rev. September 1997.

The Maintenance Council, Recommended Practice RP1210A, "Windows™ Communication API," July 1999.

"Staff Report: Initial Statement of Reasons, Public Hearing to Consider Amendments Adopting More Stringent Emission Standards for 2007 and Subsequent Model Year Heavy-Duty Diesel Engines," Air Resources Board, September 7, 2001.

"Draft Preliminary Staff Report: Initial Statement of Reasons, Technical Status and Diagnostic System Requirements for 2007 and Subsequent Model Year Heavy-Duty Vehicles and Engines," Air Resources Board, July 25, 2003.

"Staff Report: Initial Statement of Reasons, Public Hearing to Consider Adoption of California Regulations for Motor Vehicle Service Information," Air Resources Board, October 26, 2001.

"California Motor Vehicle Service Information Rulemaking Status (Agenda Item No. 01-10-1): Immobilizers," Air Resources Board Memorandum, November 13, 2002.

Mail-Out MSO #2003-03, "Proposed Amendments to the California Motor Vehicle Service information Rulemaking," Air Resources Board, July 7, 2003.

Final Rulemaking, "Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Weighing 14,000 Pound Gross Vehicle Weight or Less." Federal Register, June 27, 2003.

Senate Bill 1146: Motor Vehicles: Pollution Control Devices, authored by State Senator John Burton; approved by Governor Gray Davis September 30, 2000.

"1997 United States Economic Census," U.S. Census Bureau.

"2000 Heavy Duty Aftermarket Profile," Automotive Aftermarket Industry Association.

"2001 Aftermarket Factbook," Automotive Aftermarket Industry Association.

Title 13, California Code of Regulations, section 1968.1.

Title 13, California Code of Regulations, section 1968.2.

Title 13, California Code of Regulations, section 1969.

Title 17, California Code of Regulation, sections 60060.1 through 60060.34

August 6, 2003, letter from the Automotive Aftermarket Industry Association and the Automotive Parts Rebuilders Association.

August 13, 2003, letter from Allison Transmission.

August 14, 2003, Position Paper submitted from the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers.

August 28, 2003, e-mail from Mr. Robert Braswell of the Technology and Maintenance Council. (Attached survey marked confidential.)

September 30, 2003, letter from the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers.

**ATTACHMENT****Proposed Amendments to:**

Title 13, California Code of Regulations, Chapter 1, Motor vehicle Pollution Control Devices, Article 2, Approval of Motor vehicle Pollution Control Devices (New Vehicles);  
Section 1969, Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty and Medium-Duty Vehicles

Set forth in this attachment are proposed amendments to title 13 of the California Code of Regulations. Proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.

## Proposed Regulation Order

Amendments to Section 1969, title 13, California Code of Regulations, chapter 1, Motor vehicle Pollution Control Devices:

Article 2. Approval of Motor vehicle Pollution Control Devices (New Vehicles)

**§1969 Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty, and Medium-Duty Vehicles, and Heavy-Duty Vehicles**

- (a) ~~Applicability. Unless otherwise noted, t~~This section shall apply to: (1) all California-certified 1994 and subsequent model-year passenger cars, light-duty trucks and medium-duty vehicles equipped with on-board diagnostic (OBD) systems pursuant to title 13, California Code of Regulations, sections 1968.1 or 1968.2; and (2) all California-certified engines and transmissions certified to the OBD requirements for heavy-duty vehicles adopted by the Air Resources Board. This section shall supersede the provisions of section 1968.1(k)(2.1) at all times that this section is effective and operative. These regulations shall also apply to any passenger cars, light-duty trucks, and medium-duty and heavy-duty vehicles certified to future on-board diagnostic requirements adopted by the Air Resources Board.
- (b) Severability of Provisions. If any provision of this section or its application is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected.
- (c) Definitions. The definitions in section 1900(b), Division 3, Chapter 9, Title 13 of the California Code of Regulations, apply with the following additions:
- (1) "Access codes, recognition codes and encryption" mean any type, strategy, or means of encoding software, information, devices, or equipment that would prevent the access to, use of, or proper function of any emission-related part.
  - (2) "Authorized service network" means a group of independent service and repair facilities that are recognized by motor vehicle manufacturers as being capable of performing repairs to factory specifications, including warranty repair work.
  - (2) 3 "Bi-directional control" means the capability of a diagnostic tool to send messages on the data bus (if applicable) that temporarily override a module's control over a sensor or actuator and give control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.
  - (3) 4 "Covered person" means: (1) any person or entity engaged in the business of service or repair of motor vehicles, engines, or transmissions who is licensed or 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 California motor vehicle fleet(s); (3) tool and equipment companies; or (4) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle parts for California motor vehicles and motor vehicle engines.

- (4 5) "Data stream information" means information that originates within the vehicle by a module or intelligent sensor (including, but not limited to, a sensor that contains and is controlled by its own module) and is transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communications wires. The information is broadcast over communication wires for use by other modules such as chassis or transmission modules to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.
- (5 6) "Days" means calendar days (unless otherwise specified in this section); in computing the time within which a right may be exercised or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included, unless:
- (A) for purposes of section 1969(e), the last day falls on a Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer, in which case the last day shall be the following day;
  - (B) for all other purposes, the last day falls on a Saturday, Sunday, or a California-recognized holiday observed by the subject motor vehicle-manufacturer, in which case the last day shall be the following day.
- (6 7) "Emission-related motor vehicle information" means information regarding any of the following:
- (A) Any original equipment system, component, or part that controls emissions.
  - (B) Any original equipment system, component, or part associated with the powertrain system including, but not limited to, the fuel system and ignition system.
  - (C) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.
- (7 8) "Emission-related motor vehicle part" means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.

- (8 9) "Enhanced data stream information" means data stream information that is specific for a motor vehicle manufacturer's brand of tools and equipment.
- (9 10) "Enhanced diagnostic tool" means a diagnostic tool that is specific to the motor vehicle-manufacturer's vehicles.
- (101) "Fair, reasonable, and nondiscriminatory price", for the purposes of section 1969, means a price that allows motor vehicle manufacturers to be compensated for the cost of providing required emission-related service information and diagnostic tools considering the following:
- (A) The net cost to the motor vehicle manufacturers' franchised dealerships or authorized service networks for similar information obtained from motor vehicle manufacturers, less any discounts, rebates or other incentive programs;
  - (B) The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included;
  - (C) The price charged by other motor vehicle manufacturers for similar information;
  - (D) The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000 the applicability of this section;
  - (E) The ability of an average covered person to afford the information.
  - (F) The means by which the information is distributed;
  - (G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and
  - (H) Inflation; and
  - (I) ~~Any additional criteria or factors considered by the United States Environmental Protection Agency for the determination of service information costs under federal regulations.~~
- (142) "Initialization" or "reinitialization" means the process of resetting a vehicle security system by means of an ignition key or access code(s).
- (13) "Intermediary information repository" means any individual or entity, other than a motor vehicle manufacturer, which collects and makes available to covered persons service information and/or information related to the development of emission-related diagnostic tools.
- (14) "Motor vehicle manufacturer," for the purposes of section 1969, means:
- (A) Any manufacturer of 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with OBD systems pursuant to title 13, California Code of Regulations, sections 1968.1 and 1968.2, or;

- (B) Any manufacturer that has certified a heavy-duty engine or transmission to the OBD requirements as adopted by the Air Resources Board.
- (125) "Nondiscriminatory" as used in the phrase "fair, reasonable, and nondiscriminatory price" means that motor vehicle manufacturers shall not set a price for emission-related service information or tools that provides franchised dealerships or authorized service networks with an unfair economic advantage over covered persons.
- (136) A "Reasonable business mean" is a method or mode of distribution or delivery of information that is commonly used by businesses or government to distribute or deliver and receive information at a fair, reasonable, and nondiscriminatory price. A reasonable business mean includes, but is not limited to, the Internet, first-class mail, courier services, intermediary information repositories, and fax services.
- (d) (1) Service Information: Except as expressly provided specified below, motor vehicle manufacturers shall make available for purchase to all covered persons all emission-related motor vehicle information that is provided to the motor vehicle manufacturer's franchised dealerships or authorized service networks for subject engine, transmission, or vehicle models. The information shall include, but is not limited to, diagnosis, service, and repair information and procedures, technical service bulletins, troubleshooting guides, wiring diagrams, and training materials.
- (2) On-Board Diagnostic System (OBD II) Information. Motor vehicle manufacturers shall make available for purchase to all covered persons, a general description of each OBD II system used in 1996 and subsequent model-year vehicles, which shall include the following:
- (A) A general description of the operation of each monitor, including a description of the parameter that is being monitored.
- (B) A listing of all typical OBD II diagnostic trouble codes associated with each monitor.
- (C) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. Motor vehicle manufacturers must also make available all existing monitor-specific OBD drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas recirculation, secondary air, and air conditioning system. As applicable, manufacturers of diesel vehicles must also list monitor-specific drive cycles for those vehicles that perform misfire, fuel system, and comprehensive

- monitoring under specific driving conditions (i.e., non-continuous monitoring).
- (D) A listing of each monitor sequence, execution frequency and typical duration.
  - (E) A listing of typical malfunction thresholds for each monitor.
  - (F) For OBD II parameters for specific vehicles that deviate from the typical parameters, the OBD II description shall indicate the deviation and provide a separate listing of the typical values for those vehicles.
  - (G) For passenger cars, light-duty trucks, and medium-duty vehicles, identification and scaling information necessary to interpret and understand data available to a generic scan tool through "mode 6," pursuant to Society of Automotive Engineers (SAE) J1979, which is incorporated by reference in title 13, CCR, sections 1968.1 and 1968.2. Heavy-duty engine, vehicle, and transmission manufacturers shall use the recommended practice(s) referenced in title 13, California Code of Regulations, section 1971, to provide information necessary to interpret "mode 6" data.
  - (H) The information required by this subsection shall not include specific algorithms, specific software code or specific calibration data beyond that required to be made available through the generic scan tool pursuant to the requirements of sections 1968.1, 1968.2, and all future adopted OBD regulations for passenger cars, light-duty trucks, and medium- and heavy-duty vehicles, except where such algorithms, codes, or data are made available to franchised dealerships or authorized service networks. To the extent possible, motor vehicle manufacturers shall organize and format the information so that it will not be necessary to divulge specific algorithms, codes, or calibration data considered to be a trade secret by the motor vehicle manufacturer.
- (3) On-Board Computer Initialization Procedures.
- (A) Consistent with the requirements of subsection (h) below, motor vehicle manufacturers shall provide make available for purchase to all covered persons computer or anti-theft system initialization information and/or related tools for vehicles so equipped necessary for:
    - (i) The proper installation of on-board computers on motor vehicles that employ integral vehicle security systems; or
    - (ii) The repair or replacement of any other emission-related part.
  - (B) Motor vehicle manufacturers must make this information available for purchase in a manner that will not require a covered person to purchase enhanced diagnostic tools to perform the initialization. Motor vehicle manufacturers may make such information

available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.

(B C) A motor vehicle manufacturer may request Executive Officer approval to be excused from the requirements above for some or all model year vehicles through the 2007 model year. The Executive Officer shall approve the request upon him or her finding that the motor vehicle manufacturer has demonstrated that:

- (i) The availability of such information to covered persons would significantly increase the risk of vehicle theft, and
- (ii) It will make available to covered persons reasonable alternative means to install computers, or to otherwise repair or replace an emission-related part, at a fair, reasonable, and nondiscriminatory price and that such alternative means do not place covered persons, as a class, at a competitive disadvantage to franchised dealerships or authorized service networks in their ability to service and repair vehicles.

(a) Any alternative means shall be available to covered persons within 24 hours of the initial request and shall not require the purchase of enhanced diagnostic tools to perform an initialization. Alternatives may include lease of such tools, but only at a fair, reasonable and nondiscriminatory price.

(b) In lieu of leasing its enhanced diagnostic tools, a manufacturer may alternatively make available for purchase to independent equipment and tool companies all data stream information needed to make their diagnostic tools fully functional for initialization purposes. Any manufacturer choosing this option must release the information to equipment and tool companies within 60 days of Executive Officer approval.

(C D) The All approvals is are conditional and subject to audit under paragraph (j) below and possible rescission if the conditions set forth in paragraph (d)(3)(B C) fail to be satisfied.

- (4) ~~The information in this subsection shall be made available for purchase no later than 180 days after the effective date of these regulations or January 1, 2003, whichever is later, for vehicle models introduced into commerce on or before these dates. For all new vehicle models for which production commences after the effective date of these regulations, motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of engine or vehicle introduction into commerce or concurrently with its availability of the information to franchised dealerships or authorized service networks, whichever occurs first.~~

- (e) (1) Information required to be made available for purchase under subsection (d), excluding paragraph (d)(3), shall be directly accessible via the Internet. As an exception, motor vehicle manufacturers with annual California sales of less than 300 engines, transmissions, or vehicles (based on the average number of California-certified engines, transmissions, or vehicles sold by the motor vehicle manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such motor vehicle manufacturers may instead propose an alternative reasonable business means for providing the information required by this section to the Executive Officer for review and approval. The alternate method shall include an Internet website that adequately specifies that the required service information is readily available through other reasonable business means at fair, reasonable, and nondiscriminatory prices. If a manufacturer later exceeds the three-year vehicle sales average, it would be required to begin complying with all Internet availability requirements the next model year. In such cases, the requirements would apply only to those engine, transmission, and vehicle models certified in that and subsequent model years and would not apply to any models that were within carry-over test groups that were initially certified before the sales average was exceeded.
- (2) For purposes of making the information available for purchase via the Internet, motor vehicle manufacturers, or their designees, shall establish and maintain an Internet website(s) that:
- (A) Is accessible at all times, except during times required for routine and emergency maintenance. Routine maintenance shall be scheduled after normal business hours. If the motor vehicle manufacturer's service information website(s) is not available for more than 24 hours for other than routine maintenance, the motor vehicle manufacturer shall notify the Executive Officer by either phone or email within one business day.
  - (B) Houses all of the required information such that it is available for direct online access, except as provided in subsections (d)(3), (e)(2)(G) and (e)(2)(J). In addition to direct access, motor vehicle manufacturers may concurrently offer the information by means of electronic mail, fax transmission, or other reasonable business means.
  - (C) Is written in English with all text using readable font sizes.
  - (D) Has clearly labeled and descriptive headings or sections, has an online index connected to a search engine and/or hyperlinks that directly take the user to the information, and has a comprehensive search engine that permits users to obtain information by various query terms including, but not limited to, vehicle model, model year, bulletin number, diagnostic procedure, and trouble code.

- (E) Provides, at a minimum, e-mail access for communication with a designated contact person(s). The contact person(s) shall respond to any inquiries within 2 days of receipt, Monday through Saturday. The website shall also provide a business address for the purposes of receiving mail, including overnight or certified mail.
- (F) Lists the most recent updates to the website. Updates must occur concurrently with the availability of new or revised information to franchised dealerships or authorized service networks.
- (G) Provides all training materials offered by the motor vehicle manufacturer. For obtaining any training materials that are not in a format that can be readily downloaded directly from the Internet (e.g., instructional tapes, full-text information associated with bundled software, CD-ROMs, or other media), the website must include information on the type of materials that are available, and how such materials can be purchased.
- (H) Offers media files (if any) and other service information documents in formats that can be viewed with commonly available software programs (e.g., Adobe Acrobat, Microsoft Word, RealPlayer, etc.).
- (I) Provides secure Internet connections (i.e., certificate-based) for transfer of payment and personal information.
- (J) Provides ordering information and instructions for the purchase of motor vehicle manufacturer emission-related enhanced diagnostic tools and reprogramming information pursuant to subsection (f).
- (K) Complies with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms," May 1998, incorporated by reference herein, for all emission-related motor vehicle information for passenger cars, light-duty trucks, and medium-duty vehicles beginning with the 2003 model year. For heavy-duty engines and vehicles to OBD regulations adopted by the ARB, emission-related nomenclature shall comply with SAE Recommended Practice J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," October 1998, incorporated by reference herein.
- (L) Complies with the following website performance criteria:
  - (i) Possesses sufficient server capacity to allow ready access by all users and has sufficient downloading capacity to assure that all users may obtain needed information without undue delay.
  - (ii) Broken weblinks shall be corrected or deleted weekly.
  - (iii) Website navigation does not require a user to return to the motor vehicle manufacturer's home page or a search engine in order to access a different portion of the site. The use of

“one-up” links (i.e., links that connect to related webpages that preceded the one being viewed) is recommended at the bottom of subordinate webpages in order to allow a user to stay within the desired subject matter.

- (iv) Any manufacturer-specific acronym or abbreviation shall be hyperlinked to a glossary webpage or pop-up window that explains its meaning.
- (M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).
- (3) All information must be maintained by the motor vehicle manufacturer for a minimum of fifteen years. After such time, the information may be retained in an off-line electronic format (e.g., CD-ROM) and made available for purchase in that format at fair, reasonable, and nondiscriminatory prices upon request. Motor vehicle manufacturers shall index their available archived information with a title that adequately describes the contents of the document to which it refers. Motor vehicle manufacturers may allow for the ordering of information directly from the website, or from a website hyperlinked to the manufacturer website. In the alternative, manufacturers shall list a phone number and address where covered persons can call or write to obtain requested information through reasonable business means.
- (4) Motor vehicle manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures that provide for a range of time periods for online access (e.g., in cases where information can be viewed online) and/or the amount of information purchased (e.g., in cases where information becomes viewable after downloading). These pricing structures shall be submitted to the Executive Officer for review concurrently with being posted on the motor vehicle manufacturer’s service information website(s).
- (5) Motor vehicle manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites. Access shall include the ability to view and download posted service information. The information necessary to access the websites (e.g., user name, password, contact person(s)) must be submitted to the Executive Officer once the websites are operational.
- (6) Reporting Requirements. Motor vehicle manufacturers shall provide the Executive Officer with reports that adequately demonstrate that the performance of their individual Internet websites meets the requirements of subsection (e)(2). Motor vehicle manufacturers shall submit such reports annually by December 31st. The Executive Officer may also require motor vehicle manufacturers to submit additional reports upon request, including any information required by the United States Environmental Protection Agency under the Federal Service Information Rule regulation. These reports shall be submitted in a format prescribed by the Executive Officer.

- (f) Diagnostic and Reprogramming Tools and Information.
- (1) Diagnostic and Reprogramming Tools.
- (A) Except as provided in (B) below, all Mmotor vehicle manufacturers shall make available for purchase through reasonable business means, including ordering over the Internet, to all covered persons, all emissions-related enhanced diagnostic tools, and reprogramming tools available to franchised dealers or authorized service networks, including software and data files used in such equipment. The motor vehicle manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made.
- (B) As a condition of purchase, heavy-duty engine and transmission manufacturers may require covered persons to participate in training courses related to the proper use of their enhanced diagnostic tools before making them available for purchase. The training must be made available at a fair, reasonable, and nondiscriminatory prices.
- (2) Data Stream and Bi-Directional Control Information.
- (A) Except as provided in (B) below, all Mmotor vehicle manufacturers shall make available for purchase through reasonable business means, to all equipment and tool companies, all information necessary to read and format all emission-related data stream information, including enhanced data stream information, that is used in diagnostic tools available to franchised dealerships or authorized service networks, and all information that is needed to activate all emission-related bi-directional controls that can be activated by franchised dealership or authorized service network tools. The motor vehicle manufacturer shall make such information available through the Internet or other reasonable business means to the requesting equipment and tool company within 14 days after the request to purchase has been made, unless the motor vehicle manufacturer petitions the Executive Officer for approval to refuse to disclose such information to the requesting company. After receipt of a petition and consultation with the affected parties, the Executive Officer shall either grant or refuse the petition based on the evidence submitted during the consultation process:
- (A i) If the evidence demonstrates that the motor vehicle manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be granted.
- (B ii) If the evidence does not demonstrate that the motor vehicle manufacturer has a reasonably-based belief that

the requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be denied and the motor vehicle manufacturer shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

- (B) As a condition of purchase of the manufacturer's enhanced diagnostic data stream and bi-directional control information, heavy-duty engine and transmission manufacturers may require that an equipment and tool company purchasing such information provide mandatory training courses to ultimate purchasers of the equipment and tools made available for sale using the purchased data stream and bi-directional control information. If required, such training shall include instruction on the proper operation of the equipment and tool as it applies the engine or transmission in question.
- (3) Reprogramming Information.
- (A) Beginning with the 2004 model year, motor vehicle manufacturers' reprogramming methods shall be compatible with SAE J2534 Paper, "Recommended Practice for Pass-Thru Vehicle Programming, February-2002 December 2003, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships or authorized service networks. Heavy-duty engine and transmission manufacturers may alternatively standardize its reprogramming methods to the Technology and Maintenance Council's Recommended Practice RP1210a, "Windows™ Communication API," July 1999, incorporated by reference herein.
- (B) Motor vehicle manufacturers shall make available for purchase through reasonable business means to covered persons for vehicle models meeting the requirements of subsection (f)(3)(A) all vehicle reprogramming information and materials necessary to install motor vehicle manufacturers' software and calibration data to the extent that it is provided to franchised dealerships or authorized service networks. The motor vehicle manufacturer shall, within 2 days of receipt of a covered person's request, provide purchased reprogramming information via an Internet download or, if available in a different electronic format, via postal mail or package delivery service.
- (4) ~~The information and tools required by this subsection shall be made available for purchase no later than 180 days after the effective date of these regulations or January 1, 2003, whichever is later, for vehicle models introduced into commerce on or before these dates. For all new vehicle models for which production commences after the above dates, motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of engine~~

or vehicle introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.

- (g) Costs: All information and diagnostic and reprogramming tools required to be provided to covered persons by these regulations shall be made available for purchase at a fair, reasonable, and nondiscriminatory prices.
- (h) Motor vehicle manufacturers shall not utilize any access code, recognition code or encryption for the purpose of preventing a vehicle owner from using an emission-related motor vehicle part (with the exception of the powertrain control module, engine control modules and transmission control modules), that has not been manufactured by that motor vehicle manufacturer or any of its original equipment suppliers.
- (i) Trade Secrets: Motor vehicle manufacturers may withhold trade secret information (as defined in the Uniform Trade Secret Act contained in Title 5 of the California Civil Code) which otherwise must be made available for purchase, subject to the following:
  - (1) At the time of initial posting of all information required to be provided under sections (d) through (f) above, the motor vehicle manufacturer shall identify, by brief description, any information that it believes to be a trade secret and not subject to disclosure.
  - (2) A covered person, believing that a motor vehicle manufacturer has not fully provided all information that is required to be provided under subsections (d) through (f) above shall submit a request in writing by certified mail to the motor vehicle manufacturer for release of the information.
  - (3) Upon receipt of the request for information, a motor vehicle manufacturer shall do the following:
    - (A) If it had not previously made the information available for purchase because of an oversight, it shall make the information available within 2 days from receipt of the request directly to the requesting covered person at a fair, reasonable, and nondiscriminatory price and by reasonable business means. Additionally, the motor vehicle manufacturer shall, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of these regulations.
    - (B) If it has not made the requested information available for purchase because it believes the information to be a trade secret, it shall within 14 days, notify the requesting covered person that it considers the information to be a trade secret, provide justification in support of its position, and make reasonable efforts to see if the matter can be resolved informally.

- (C) If during this 14 day period set forth in paragraph (B), the motor vehicle manufacturer determines that the information is, in fact, not a trade secret, it shall immediately notify the requesting covered person of its determination and make the information available within the timeframes and means set forth in paragraph (A)
  - (D) If the parties can informally resolve the matter, the motor vehicle manufacturer shall within 2 days provide the requesting covered person with all of the information that is subject to disclosure consistent with that agreement. The motor vehicle manufacturer shall also, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of these regulations.
  - (E) If the matter cannot be informally resolved, the motor vehicle manufacturer shall, within 21 days from the date that it initially received the request for information, petition the California superior court for declaratory relief to make a finding that the information is exempt from disclosure because it is a trade secret. The petition shall be filed in accordance with the California Code of Civil Procedure section 395 et seq. The petition shall be accompanied with a declaration stating facts that show that the motor vehicle manufacturer has made a reasonable and good faith attempt to informally resolve the matter.
- (j) Executive Officer Review of Compliance.
- (1) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.
  - (2) The Executive Officer, through the Chief of the Mobile Source Operations Division (Division Chief), shall periodically audit a motor vehicle manufacturer's Internet website(s) and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Motor vehicle manufacturers must provide the Executive Officer with free unrestricted access to the sites and other sources for the purposes of an audit.
  - (3) The Division Chief shall also commence an audit upon receipt of a request from a covered person that provides reasonable cause to believe that a motor vehicle manufacturer is not in compliance.
    - (A) Such a request shall be in the form of a written declaration setting forth specific details of the alleged noncompliance of the motor vehicle manufacturer. The declaration shall also set forth facts that demonstrate that the requesting covered has undertaken efforts to resolve the matter informally with the named motor vehicle manufacturer.

- (B) The covered person shall concurrently serve a copy of the audit request on the motor vehicle manufacturer against whom the request has been filed.
  - (C) The Division Chief shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer is in noncompliance with Health and Safety Code section 43105.5 or these regulations and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the motor vehicle manufacturer directly. If the Division Chief determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's site. Otherwise, the Division Chief shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer of his or her determination.
- (4) In conducting any audit, the Division Chief may require the motor vehicle manufacturer to provide the ARB with all information and materials related to compliance with the requirements of Health and Safety Code section 43105.5 and this regulation, including but not limited to:
- (A) Copies of all books, records, correspondence or documents in its possession or under its control that the motor vehicle manufacturer is required to provide to persons engaged in the service and repair industries and to equipment and tool companies under paragraphs (c) through (f) of this regulation, and
  - (B) Any and all reports or records developed or compiled either for or by the motor vehicle manufacturer to monitor performance of its Internet site(s).
- (5) In conducting the audit, the Division Chief may order or subpoena the motor vehicle manufacturer, the party filing the request for inspection, or any other person with possible knowledge of the issue of noncompliance to appear in person and testify under oath. The Division Chief may also request or subpoena such persons to provide any additional information that the Division Chief deems necessary to determine any issue of noncompliance.
- (6) Except for good cause, the audit shall be completed within 60 days from the date that the Division Chief notifies the motor vehicle manufacturer about the audit. At the conclusion of the audit, the Division Chief shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer.
- (7) If the Division Chief finds sufficient credible evidence that the motor vehicle manufacturer is not in compliance with any requirements of Health and Safety Code section 43105.5 or this regulation, the determination shall be in the form of a notice to comply against the motor vehicle manufacturer.

- (8) The Division Chief's determination not to issue a notice to comply against a motor vehicle is subject to limited review by the Executive Officer.
- (A) A covered person may only request that the Executive Officer review a determination that it specifically requested pursuant to paragraph (3) above.
  - (B) The covered person shall file the request for Executive Officer review within 10 days from the date of issuance of the Division Chief's determination.
    - (i) The request shall be filed to the attention of the Executive Officer c/o Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812-2815. A copy of the request shall be concurrently served on the motor vehicle manufacturer that was the subject of the audit and determination.
    - (ii) The request shall set forth specific facts and reasons why the determination should be reviewed and supporting legal authority for why a notice to comply should have been issued.
  - (C) The motor vehicle manufacturer may file an opposition to the request for review within 10 days from the date of service of the request for review.
  - (D) The Executive Officer shall issue a determination within 30 days from the last day that the motor vehicle manufacturer had to file an opposition. The Executive Officer may affirm the decision of the Division Chief; remand the matter back to the Division Chief for further consideration or evidence; or issue a notice to comply against the motor vehicle manufacturer.
- (9) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer shall either:
- (A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive Officer deems appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance; or
  - (B) Request an administrative hearing to consider the basis or scope of the notice to comply.
- (10) If the motor vehicle manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The Executive Officer shall reject the compliance plan if the Executive Officer finds that it will not bring the motor vehicle manufacturer into compliance within 45 days from the date that the plan would have been approved, or such longer period that the Executive Officer deemed

appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance. The Executive Officer shall notify the motor vehicle manufacturer in writing of his or her determination, and that the Executive Officer will be seeking administrative review pursuant to subsection (k) below.

- (11) After approving a proposed compliance plan, if the Executive Officer determines that the motor vehicle manufacturer has failed to comply with the terms of the plan, the Executive Officer shall notify the motor vehicle manufacturer of his or her determination and that he or she will be seeking administrative review pursuant to subsection (k) below.
- (k) **Administrative Hearing Review.**
- (1) A motor vehicle manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the motor vehicle manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by paragraph (j)(8)(A) shall result in the Executive Officer's determination becoming final and may subject the motor vehicle manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and paragraph (l).
- (2) The Executive Officer shall forward the following matters to a hearing officer for appropriate administrative review, including, if warranted, consideration of penalties:
- (A) A compliance plan that it has rejected pursuant to paragraph (j)(9).
- (B) A notice to comply that has been issued against a motor vehicle manufacturer who has failed to either request administrative review of the Executive Officer determination, or, in the alternative, to submit a compliance plan.
- (C) An Executive Officer determination that a motor vehicle manufacturer has failed to satisfy the terms of a compliance plan it has submitted in response to a notice to comply.
- (3) Administrative hearings under this regulation shall be conducted pursuant to the procedures set forth in title 17, California Code of Regulations, section 60060 et seq.
- (l) **Penalties.**
- (1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer may impose a civil penalty upon the motor vehicle manufacturer in an amount not to exceed \$25,000 per day (including Saturdays, Sundays, and observed holidays) per violation until the violation is corrected. The hearing officer may immediately impose a

- civil penalty in cases where a motor vehicle manufacturer has failed to act in accordance with a compliance plan it has previously submitted.
- (2) For purposes of this section, a finding by a hearing officer that a motor vehicle manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13, CCR, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

NOTE: Authority cited: sections 39600, 39601, 43000.5, 43018, and 43105.5, and 43700, Health and Safety Code. Reference: section 39027.3, 43104 and 43105.5, Health and Safety Code