

California Motor Vehicle Service Information Rulemaking Status

(Annual Report to the California State Legislature
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ABSTRACT

Pursuant to Health and Safety Code (HSC) Section 43105.5, the Air Resources Board (ARB or Board) has adopted regulations which provide for the availability of emission-related service information and tools to service technicians and replacement parts companies not affiliated with a motor vehicle manufacturer. Subsection 43105.5 (g) requires the ARB to report annually to the Legislature, through 2009, on the effectiveness of the regulations it has adopted. This is the second report submitted to the Legislature in compliance with the subsection, covering calendar year 2003.

California's motor vehicle service information regulation became effective on March 30, 2003. From the effective date, manufacturers have been required to operate and maintain Internet websites that provide direct access to dealership quality service information, tools and training. Initial indications are that manufacturers have generally been successful in meeting the requirement of the regulations. To date, there have been very few complaints from persons entitled to the information. These complaints were resolved informally.

The ARB staff updated the Board on January 22, 2004, on manufacturers' progress in implementing these regulations. At the hearing, the Board adopted regulatory amendments that will expand the applicability of the regulation to heavy duty vehicles as the engines used to power these vehicles become subject to on-board diagnostic requirements for the detection of emission-related malfunctions. The staff's update also addressed an issue regarding access to information needed to remanufacture on-board computers designed for vehicles equipped with "immobilizer" passive anti-theft systems. In 2001, the Board asked the staff to determine whether vehicle manufacturers could provide computer remanufacturers with information or equipment necessary to effectively bench test rebuilt computers without compromising motor vehicle security. In its update, the staff identified a viable solution to the computer remanufacturing issue based on the adaptation of "generic" re-initialization technology required by recently amended federal service information requirements. The Board adopted a requirement similar to the federal provision to ensure that the basis for reasonably priced bench testing of remanufactured on-board computers continues to be in place.

Other amendments to the regulation to further consistency between California and federal regulations and to address minor clarity issues were adopted as well.

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 on-board diagnostic (OBD) systems 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.

In creating Health and Safety Code Section 43105.5, SB1146 made the finding that “to prevent unnecessary pollution, it is in the best interests of this state to ensure that the ability of California motorists to obtain service, repair, or replacement of faulty emissions-related components of their motor vehicles is not limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers.” Furthermore, the Legislature found that “the withholding of essential service, repair, and parts information and tools by vehicle manufacturers from independent automotive repair technicians and independent aftermarket parts manufacturers may result in improper and needless costly repairs that could also endanger the public and result in anticompetitive effects harmful to the best interests of the state.”

ARB adopted regulations in compliance with Health and Safety Code 43105.5 in December 2001.

SUMMARY OF REQUIREMENTS

The ARB’s regulation is codified in Title 13, California Code of Regulations (CCR), section 1969 and Title 17, CCR, Sections 60060.1 through 60060.34. The requirements 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.

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 information¹ and bi-directional control information² 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.

¹ "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.

² "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.

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. This issue is discussed in more detail later in this report.

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 manufacturers’ 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 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 their 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 a manufacturer 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 its requirements 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.

COMPARABLE FEDERAL REGULATIONS

The U.S. EPA finalized significant amendments to its federal service information requirements in June, 2003.³ During development of their respective regulations, the ARB staff worked closely with the U.S. EPA to ensure that California and federal requirements are harmonized to the extent possible.

The primary remaining differences between the regulations are with respect to the scope of the requirements and enforcement. Regarding scope, the federal regulation ensures information access only to the service and repair industry; however, the ARB's service information regulation also provides that the aftermarket parts industry is entitled to information and tools. With respect to enforcement, the provisions in ARB's regulation to ensure that manufacturers comply with California's service information requirements are significantly different from those under federal law. The broader scope of the California regulation and the framework for the regulation's enforcement were directed by the mandates of SB 1146.

IMPLEMENTATION STATUS

As required by the regulation, all major light- and medium-duty vehicle manufacturers now 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	https://www.serviceexpress.honda.com	\$20.00 (72 hr)	\$50.00	\$500.00
AM General*	http://www.amgeneralcorp.com	Documents Individually Priced		
Audi	http://erwin.audi.com	Documents Individually Priced		
BMW	http://www.bmwtechinfo.com	\$20.00 (24 hr)	\$300.00	\$2,500.00
Bentley*	http://www.bentleytechinfo.com	Documents Individually Priced		
Chrysler	http://www.techauthority.com	\$20.00 (24 hr)	\$200.00	N/A
Ferrari*	http://www.ferrariusa.com	Documents Individually Priced		
Ford	http://www.motorcraftservice.com	\$19.95 (72 hr)	\$299.95	\$2,499.95

³ Federal Register, Vol. 68, No. 124, June 27, 2003.

General Motors	http://service.gm.com	\$20.00 (24 hr); \$45.00 (5 day)	\$150.00	\$1,200.00
Honda	https://www.serviceexpress.honda.com	\$20.00 (72 hr)	\$50.00	\$500.00
Hyundai	http://www.hmaservice.com	Free		
Infiniti	http://www.infinititechinfo.com	\$19.99 (24 hr)	\$299.98	\$2,499.98
Isuzu	http://www.isuzusource.com	\$20.00 (24 hr)	\$150.00	\$1,650.00
Jaguar	http://www.jaguartechinfo.com	\$20.00 (24 hr)	\$150.00	\$500.00
Kia	http://www.kiatechinfo.com	Free		
Lamborghini*	http://www.lamborghini.com	Documents Individually Priced		
Land Rover	http://www.landrovertechinfo.com	\$20.00 (24 hr)	\$150.00	\$500.00
Lexus	http://techinfo.lexus.com	\$10.00 (24 hr)	\$50.00	\$350.00
Mazda	http://www.mazdatechinfo.com	19.95 (24 hr), \$50.00 (72 hr)	\$900 (6 mo)	\$1,500.00
Maserati*	http://www.maseratiusa.com	Documents Individually Priced		
Mercedes-Benz	http://www.startekinfo.com	\$20.00 (24 hr)	\$300.00	\$2,500.00
Mini	http://www.minitechinfo.com	\$20.00 (24 hr)	\$300.00	\$2,500.00
Mitsubishi	http://www.mitsubishitechinfo.com	\$19.95 (24 hr); \$99.95 (1 wk)	\$249.99; \$999.99 (6 mo)	\$1,499.95
Nissan	http://www.nissantechinfo.com	\$19.99 (24 hr)	\$299.98	\$2,499.98
Porsche	https://techinfo.porsche.com	\$110/document	N/A	\$5,200.00
Rolls-Royce*	http://www.rrtis.com	Documents Individually Priced		
Saab	http://www.saabtechinfo.com	\$10.00	\$75.00; \$180.00 (3 mo)	\$500.00
Subaru	http://techinfo.subaru.com	\$19.95 (72 hr)	\$299.95	\$2,499.95
Suzuki	http://www.suzukitechinfo.com	\$19.99 (24 hr)	\$99.99; \$299.99 (6 mo)	\$499.99
Toyota	http://techinfo.toyota.com	\$10.00 (24 hr)	\$50.00	\$350.00
Volkswagen	https://erwin.volkswagen.de	Documents Individually Priced		
Volvo	http://www.volvotechinfo.com	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 with respect to 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.

Initial subscription information from manufacturers indicates that demand for the websites has been somewhat lower than expected. For example, although Chrysler and Ford reported that approximately 500 and 1000 subscriptions, respectively, were purchased in 2003, the vast majority of the subscriptions were for short term access (i.e., 1 to 3 days). Therefore, it appears that most service technicians are continuing to rely on more traditional sources for necessary service information, such as printed manuals or the condensed information offered by third party service information providers such as Chilton and Alldata.

The first round of annual reports required by the regulation are currently due to ARB staff. Manufacturers are required to summarize in these reports the performance of their service information websites in relation to ARB's requirements. The staff will use these reports to further ensure that implementation issues are identified and addressed in a timely manner.

REGULATORY ACTIVITY

The ARB staff proposed amendments to the service information requirements at the Board's January 22, 2004, hearing. The amendments address issues regarding the applicability of the regulation and open issues from the ARB's December 2001 Hearing. Following testimony from interested stakeholders, the Board approved the proposed amendments.

Regarding applicability of the regulation, the requirements were broadened to include manufacturers of new heavy-duty engines and transmissions as their products become subject to OBD requirements separately under development by ARB staff. The staff 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.

Most of the provisions of the regulation that now apply to light- and medium-duty vehicles now also apply to heavy-duty vehicles. The regulation requires 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 also requires heavy-duty manufacturers to 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 regulation contains necessary adjustments to reflect differences between the light-duty and heavy-duty vehicle manufacturing and service industries.

At the hearing, a question was raised regarding liability to heavy-duty manufacturers if a tool company were to make aftermarket diagnostic or reprogramming tools without adequate safeguards to ensure proper vehicle operation. ARB legal staff is currently researching this issue and will update the Board on its findings. The staff also committed to work with heavy-duty engine and transmission manufacturers to address any new regulatory concerns that may arise as ARB staff's proposal for heavy-duty OBD requirements is finalized.

The staff's update to the also Board addressed an outstanding issue regarding 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 special 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 was determined that a viable solution to the computer remanufacturing issue was available through the use of "generic" re-initialization technology required by the recently amended federal service information requirements. The provision requires manufacturers to design and implement immobilizer re-initialization procedures that do not require the use of factory diagnostic tools, which are typically expensive to buy. Instead, the manufacturers' procedures may rely on the use of capabilities found in lower cost aftermarket scan tools and reprogramming equipment or low cost manufacturer specific cables and tools. The ARB staff included a similar requirement in California's regulation to ensure that the basis for reasonably priced bench testing of remanufactured on-board computers continued to be in place.

The Board approved the staff's proposed amendments; however, based on comments from the aftermarket that the immobilizer solution would be difficult to implement in a cost effective way, the Board asked the staff to meet again with stakeholders to ensure that the identified solution can be practically implemented and that all other potential solutions had been fully investigated. The staff plans to hold the meeting in April 2004 and to update the Board on its findings later in the year.

Other minor modifications were also made to harmonize with federal service information requirements and to assist with the implementation and enforcement of the overall regulation. Further detail on the ARB staff's amendments to the regulation can be found in the Initial Statement of Reasons (Staff Report) for the January 2004 Hearing, attached.

CONTACTS

If you have questions or concerns regarding issues related to the service information rulemaking, please direct them to either Mr. Allen Lyons (alyons@arb.ca.gov), Chief, Mobile Source Operations Division, at (626) 450-6156; Mr. Michael Terris (mterris@arb.ca.gov), Legal Counsel, at (916) 445-9815; or Mr. Dean Hermano (dhermano@arb.ca.gov), Staff Engineer, at (626) 459-4487.

Attachment

ATTACHMENT

Initial Statement of Reasons (Staff Report) For January 2004 Board Hearing