

# Appendix A-10

## Proposed Regulation Order

### Section 1969

[Note: This version of the Proposed Regulation Order complies with Government Code section 11346.2 subdivision (a)(3). The proposed amendments are shown in underline to indicate additions and strikethrough to indicate deletions from the existing regulatory text. For ease of readability, CARB has also provided a version of the proposed amendments that can toggle between amendments in strikeout/underline and a "clean" version with amendments incorporated into the regulatory text, which can be found in Appendix – 10.1.]

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, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty Engines.

## Proposed Regulation Order

Title 13, California Code of Regulations

Amend Section 1969 of title 13, California Code of Regulations, to read as follows:

### **§ 1969. Motor Vehicle Service Information - 1994 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty Engines.**

(a) Applicability

- (1) This section shall apply to: (1) all California-certified 1994 and subsequent model-year passenger cars, light-duty trucks and medium-duty engines and 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 2007 and subsequent model year California-certified heavy-duty engines equipped with OBD systems pursuant to title 13, California Code of Regulations, sections 1971 or 1971.1.; (3) all 2011 and subsequent model-year passenger cars and light-duty trucks defined as zero emission vehicles pursuant to title 13, California Code of Regulations, sections 1962.1, 1962.2, and 1962.4, and (4) This section shall supersede the provisions of section 1968.1(k)(2.1) at all times that this section is effective and operative. This regulation shall also apply to any passenger cars, light-duty trucks, medium-duty vehicles, and medium- and heavy-duty engines certified to future on-board diagnostic requirements adopted by the California 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. Air Resources Board.
- (2) Motor vehicle and engine manufacturers shall comply with amendments made to this section no later than 90 days after such amendments are made effective by the Secretary of State. Copies of any amendments to this section may be obtained upon request to the Chief of the ~~Mobile Source Operations~~Emissions Certification and Compliance Division at ~~9528 Telstar~~4001 Iowa Avenue, El Monte~~Riverside~~, California ~~91731~~92507.

(b) Optional Medium- and Heavy-Duty Regulatory Compliance.

- (1) Motor vehicle manufacturers that produce engines for use on heavy-duty vehicles may, for those engines, alternatively comply with all service information and tool provisions of this regulation that are applicable to 1994 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, subject to Executive Officer approval. Implementation dates must comply with the service information provision dates applicable to engine manufacturers.
  - (2) Engine manufacturers of diesel-derived engines for use in medium-duty vehicles may, for those engines, alternatively comply with all service information and tool provisions of this regulation that are applicable to 2010 and subsequent model year heavy-duty engines, subject to Executive Officer approval. Implementation dates must comply with the service information provision dates applicable to motor vehicle manufacturers.
- (c) 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.
- (d) 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~~providers that are recognized by motor vehicle manufacturers or engine manufacturers as being capable of performing repairs to factory specifications, including warranty repair work.
  - (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.

- (4) "Covered person" means: (1) any person or entity engaged in the business of service or repair of passenger cars, light-duty trucks, or medium-duty motor vehicles, traction batteries, 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 person or entity engaged in the business of service or repair of heavy-duty motor vehicles, engines, or transmissions; (3) any commercial business or government entity that repairs or services its own California motor vehicle fleet(s); (4) tool and equipment companies; ~~or~~ (5) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle or engine parts for California motor vehicles and motor vehicle engines; or (6) any person or entity engaged in the manufacture or remanufacture of propulsion-related parts for zero emission vehicles.
- (5) "Data stream information" means information that originates within a vehicle or engine 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.~~ for use by diagnostic tools. Data stream information does not include engine calibration-related information.
- (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 the last day falls on a Saturday, Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer or engine manufacturer, in which case the last day shall be the following day.
- (7) "Diesel-derived engine" means an engine using a compression ignition thermodynamic cycle and powered by either diesel fuel or alternative fuels such as liquefied petroleum gas or compressed natural gas.
- (8) "Emission-related motor vehicle information" means 1994 and subsequent model year passenger car, light-duty truck, and medium-duty engine and vehicle information regarding any of the following:

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- (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.
- (9) "Emission-related engine information" means 2007 and subsequent model year heavy-duty engine 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 engine system including, but not limited to, the fuel system and ignition system. For the purposes of this regulation, if an engine manufacturer elects to have its OBD system monitor inputs received from the transmission, the engine manufacturer is responsible for making relevant transmission system information available pursuant to subsection (e)(2); it shall also make available, beginning with the 2010 model year, and pursuant to subsection (e)(1), all corresponding repair information needed to repair the malfunction and turn off the malfunction indicator light.
- (10) "Emission-related motor vehicle or engine part" means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle or engine, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.
- (11) "Engine manufacturer," for the purposes of this regulation and unless otherwise noted, means any manufacturer of 2007 and subsequent model year heavy-duty engines equipped with on-board diagnostic systems pursuant to title 13, California Code of Regulations, sections 1971 or 1971.1.

- (12) "Enhanced data stream information" means data stream information that is specific for a motor vehicle manufacturer's or an engine manufacturer's brand of tools and equipment.
- (13) "Enhanced diagnostic, recalibration, and reconfiguration tool" means a proprietary tool developed by or for an engine manufacturer for its engines that can perform emission-related functions including, but not limited to, generic and enhanced tool diagnostic capability, recalibration, and reconfiguration.
- (14) "Enhanced diagnostic tool" means a diagnostic tool that is specific to a motor vehicle manufacturer's vehicles or an engine manufacturer's engines and which can be used for emission-related repair purposes.
- (15) "Fair, reasonable, and nondiscriminatory price", for the purposes of section 1969, means a price that allows a motor vehicle or engine manufacturer to be compensated for the cost of providing required emission-related motor vehicle or engine information and diagnostic tools considering the following:
  - (A) The net cost to the motor vehicle or engine manufacturer's franchised dealerships or authorized service networks, as applicable, for similar information obtained from motor vehicle manufacturers or engine manufacturers, less any discounts, rebates or other incentive programs;
  - (B) The cost to the motor vehicle manufacturer or engine manufacturer, as applicable, 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 or engine manufacturers, as applicable, for similar information;
  - (D) The price charged by the motor vehicle manufacturer or engine manufacturer, as applicable, for similar information immediately prior to 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.
- (16) "Generic scan tool" is a tool that can read standardized information pursuant to title 13, California Code of Regulations, sections 1968.1, 1968.2, and/or 1971.1 and that can be used on a number of different engines manufactured by different manufacturers.
- (17) "Initialization" or "reinitialization" means the process of resetting a vehicle or engine security system by means of an ignition key or access code(s).
- (18) "Intermediary information repository" means any individual or entity, other than a motor vehicle manufacturer or engine manufacturer, which collects and makes available to covered persons service information and/or information related to the development of emission-related diagnostic tools.
- (19) "Motor vehicle manufacturer," for the purposes of this section, means any manufacturer of 1994 and subsequent model year engines or vehicles in the following classes: passenger cars, light-duty trucks, and medium-duty vehicles equipped with on-board diagnostic systems pursuant to title 13, California Code of Regulations, sections 1968.1 or 1968.2, and passenger cars and light-duty trucks are certified as zero emission vehicles pursuant to title 13, California Code of Regulations, sections 1962.1, 1962.2 and 1962.4 and applicable test procedures.
- (20) "Nondiscriminatory" as used in the phrase "fair, reasonable, and nondiscriminatory price" means that motor vehicle manufacturers and engine manufacturers shall not set a price for emission-related motor vehicle or engine information or tools that provides franchised dealerships or authorized service networks with an unfair economic advantage over covered persons.
- (21) "On-board diagnostic system" or "OBD system" for purposes of this section means any system certified to meet the requirements of title 13, California Code of Regulations, sections 1968.1, 1968.2, 1971, 1971.1, or future OBD requirements adopted by the Air Resources Board.



(22) A "Propulsion-related information" means 2012 and subsequent model year passenger car and light-duty truck zero emission vehicle information regarding propulsion-related parts or any original equipment system, components, or parts that, in disrepair, render the vehicle inoperable.

(23) "Propulsion-related part," for the purposes of this section 1969, means any original equipment system, component, or part that is used on a zero emission vehicle to refuel or recharge the vehicle, store fuel or energy for the vehicle, propel the vehicle, or recover or recoup vehicle kinetic energy, including components used to control, manage, or thermally manage such propulsion components. Examples of such propulsion-related parts are vehicle high voltage batteries, drive motors, inverters, converters, on-board charging system components, fuel cell stack components, refueling and fuel tank components, fuel cell air and fuel delivery components, regenerative braking system components, and the power electronics, electronic control units, and thermal management systems of such components and systems.

~~(22)~~(24) "Reasonable business means" 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.

~~(23)~~(25) "Recalibration" means the process of downloading to an engine's on-board computer emission-related, heavy-duty revisions of on-board computer application software and calibration parameters with default configurations. Recalibration is not dependent on the use of the vehicle identification number (VIN) in determining vehicle configuration.

~~(24)~~(26) "Reconfiguration" means the process of enabling or adjusting engine features or engine parameters associated with such features to adapt a heavy-duty engine to a particular vehicle and/or application.

~~(e)~~ \_\_\_\_\_

(e) Service Information Requirements

- (1) Service Information. Except as expressly specified below, motor vehicle manufacturers and engine manufacturers shall respectively make available for purchase to all covered persons all emission-related motor vehicle information and emission-related engine information, and propulsion-related information, as applicable, that is provided to the motor vehicle manufacturer's or engine manufacturer's franchised dealerships or authorized service networks for the engine or vehicle models they have certified in California. Motor vehicle manufacturers and engine manufacturers electing to comply with one of the options of subsection (b) shall make available the emission-related information for the vehicle class for which they opt to comply. 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 useful for self-study outside a motor vehicle manufacturer's or engine manufacturer's training classroom. Any motor vehicle manufacturer or engine manufacturer choosing to withhold training materials because it has determined they are not useful for self-study as indicated above shall identify and describe the materials on its website. The motor vehicle manufacturer's or engine manufacturer's determination is subject to Executive Officer review and approval.
  
- (2) On-Board Diagnostic System (OBD) Information. Motor vehicle manufacturers and engine manufacturers shall make available for purchase to all covered persons, a general description of each OBD system used in 1996 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, and 2007 and subsequent model year heavy-duty engines, 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 diagnostic trouble codes associated with each monitor.

- (C) A description of the typical enabling conditions for each monitor to execute during vehicle or engine 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 and engine 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 or engines must also make available all existing monitor-specific drive cycle information for those engines and 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 parameters for specific vehicles and engines that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles and engines. Subject to Executive Officer approval, manufacturers may consolidate typical value listings into a range of values or another acceptable format if the number of typical parameters is unduly burdensome to list.
- (G) Identification and Scaling Information.
  - 1. For 1994 and subsequent model year passenger cars, light-duty trucks, and medium-duty engines and vehicles, identification and scaling information necessary to interpret and understand data available to a generic scan tool through Service/Mode 6, pursuant to Society of Automotive Engineers (SAE) J1979, "E/E Diagnostic Test Modes - Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002, which is incorporated by reference in title 13, California Code of Regulations, sections 1968.1 and 1968.2.

2. For 2013 and subsequent model year heavy-duty engines, identification and scaling information necessary to interpret and understand data available through Diagnostic Message 8 pursuant to SAE Recommended Practice J1939-73 or through Service/Mode \$06 pursuant to Society of Automotive Engineers (SAE) J1979, "E/E Diagnostic Test Modes - Equivalent to ISO/DIS 15031-5: April 30, 2002," April 2002, both of which are incorporated by reference in title 13, California Code of Regulations, section 1971.1.
- (H) Except as provided below, the information required by this subsection does not include specific algorithms, specific software code or specific calibration data beyond those required to be made available through the generic scan tool pursuant to the requirements of title 13, California Code of Regulations, sections 1968.1, 1968.2, 1971.1, as applicable, and all future adopted OBD regulations for passenger cars, light-duty trucks, medium-duty engines and vehicles, and heavy-duty engines. Algorithms, software codes, or calibration data that are made available to franchised dealerships or authorized service networks shall be made available for purchase to covered persons. To the extent possible, motor vehicle manufacturers and engine 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 or engine manufacturer.
- (3) On-Board Computer Initialization Procedures.
- (A) Consistent with the requirements of subsection (i) below, motor vehicle manufacturers and engine manufacturers shall make available for purchase to all covered persons computer or anti-theft system initialization information for vehicles or engines so equipped necessary for:
1. The proper installation of on-board computers on motor vehicles or engines that employ integral vehicle security systems; or
  2. The repair or replacement of any other emission-related part.

- (B) Motor vehicle manufacturers and engine 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 and engine manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.
- ~~(C) A motor vehicle manufacturer or engine manufacturer may request Executive Officer approval to be excused from the requirements above for some or all model year vehicles or engines, as applicable, through the 2009 model year. The Executive Officer shall approve the request upon finding that the motor vehicle manufacturer or engine manufacturer has demonstrated that:~~
- ~~1. The availability of such information to covered persons would significantly increase the risk of vehicle theft;~~
  - ~~2. A technical and economic need for such a request exists; and~~
  - ~~3. 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 either franchised dealerships or authorized service networks in their ability to service and repair vehicles or engines.~~
    - ~~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 motor vehicle manufacturer or engine 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 motor vehicle manufacturer or engine manufacturer choosing this option must release the information to equipment and tool companies within 60 days of Executive Officer approval.~~

~~(D) All approvals are conditional and subject to audit under subsection (l) below and possible rescission if the conditions set forth in subsection (e)(3)(C) fail to be satisfied.~~

(4) The information required by this subsection shall be made available for purchase 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.

(f) Internet Availability for Service Information.

- (1) Information required to be made available for purchase under subsection (e), excluding subsection (e)(3), shall be directly accessible via the Internet. As an exception, motor vehicle manufacturers or engine manufacturers with annual California sales of less than 300 engines or vehicles (based on the average number of California-certified engines or vehicles sold by the motor vehicle manufacturer or engine manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such motor vehicle manufacturers and engine 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 motor vehicle manufacturer or engine manufacturer later exceeds the three-year 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 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 and engine 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 or engine manufacturer's service information website(s) is not available for more than 24 hours for other than routine maintenance, the motor vehicle manufacturer or engine manufacturer, as applicable, 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 (i.e., for online viewing and/or file downloading), except as provided in subsections (e)(3), (f)(2)(G) and (f)(2)(J). In addition to direct online access, motor vehicle manufacturers and engine 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, engine, transmission, or vehicle model (as applicable), 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 Friday. 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, whichever occurs first.
- (G) Provides all training materials offered by the motor vehicle manufacturer or engine manufacturer, as applicable, as required under subsection (e)(1). 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.).



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- (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 tools and information that are required to be made available pursuant to subsections (g) and (h).
- (K) Complies with the following requirements for term, definitions, abbreviations, and acronyms:
  - 1. For 2003 and subsequent model-year passenger cars, light duty trucks, and medium-duty engines and vehicles, complies with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms - Equivalent to ISO/TR 15031-2: ~~April 30, 2002, " April 2002"~~ March 2017, incorporated by reference herein, for all emission-related motor vehicle information.
  - 2. For 2010 and later model year heavy-duty engines, emission-related nomenclature shall comply with SAE J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," ~~August 2004~~ February 2014, incorporated by reference herein.
- (L) Complies with the following website performance criteria:
  - 1. 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.
  - 2. Broken weblinks shall be corrected or deleted weekly.
  - 3. Website navigation does not require a user to return to the motor vehicle manufacturer's or engine 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.

4. Any manufacturer-specific acronym or abbreviation shall be defined in a glossary webpage which, at a minimum, is hyperlinked by each webpage that uses such acronyms and abbreviations. Motor vehicle manufacturers and engine manufacturers may request Executive Officer approval to use alternate methods to define such acronyms and abbreviations. The Executive Officer shall approve such methods if the motor vehicle manufacturer or engine manufacturer adequately demonstrates that the method provides equivalent or better ease-of-use to the website user.
  - (M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).
- (3) All information must be maintained by motor vehicle manufacturers and engine manufacturers 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 and engine 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 and engine manufacturers may allow for the ordering of information directly from the website, or from a website hyperlinked to the motor vehicle manufacturer's or engine manufacturer's website. In the alternative, motor vehicle manufacturers and engine 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 and engine manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures relative to 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 or engine manufacturer's service information website(s).

- (5) Motor vehicle manufacturers and engine manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites. Access shall include the ability to directly 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 and engine manufacturers shall provide the Executive Officer with reports that adequately demonstrate that their individual Internet websites meet the requirements of subsection (f)(2). The reports shall also indicate the performance and effectiveness of the websites by using commonly used Internet statistics (e.g., successful requests, frequency of use, number of subscriptions purchased, etc.). Motor vehicle manufacturers and engine manufacturers shall submit such reports annually within 30 days of the end of the calendar year. The Executive Officer may also require motor vehicle manufacturers and engine manufacturers to submit additional reports upon request, including any information required by the United States Environmental Protection Agency under the federal service information regulation. These reports shall be submitted in a format prescribed by the Executive Officer.
- (g) Light-Duty and Medium-Duty Vehicle Diagnostic and Reprogramming Tools and Information.
- (1) Diagnostic and Reprogramming Tools. Motor vehicle manufacturers shall make available for purchase through reasonable business means to all covered persons, all emission-related and propulsion-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.

- (2) Data Stream and Bi-Directional Control Information. Motor 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 and propulsion-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 and propulsion-related bi-directional controls that can be activated by manufacturer owned dealership, franchised dealership or authorized service network tools. Motor vehicle manufacturers may require, as a condition of sale, that the business agreement contain indemnity or "hold harmless" clauses that relieve the motor vehicle manufacturer from any liability resulting from damage caused by tools produced by the tool and equipment company that is otherwise not attributable to the data provided by the motor vehicle manufacturer. Motor vehicle manufacturers shall make all required 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 ("petition for non-disclosure") to the requesting company or petitions the Executive Officer for additional time to comply ("petition for additional time"). 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) 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 that would not cause damage to the vehicle, a petition for non-disclosure will be granted.
- (B) If the evidence demonstrates that the motor vehicle manufacturer does not have a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the vehicle, a petition for non-disclosure 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.

- (C) If the motor vehicle manufacturer submits a petition for additional time, and satisfactorily demonstrates to the Executive Officer that the motor vehicle manufacturer is able to comply but requires additional time within which to do so, the Executive Officer shall grant the petition and provide additional time that is necessary to fully and expeditiously comply. Petitions for additional time shall be considered by the Executive Officer on a case-by-case basis.
- (3) Reprogramming Information.
  - (A) Beginning with the 2004 model year, reprogramming methods used for passenger cars, light-duty trucks, and medium-duty engines and vehicles shall be compatible with SAE J2534-1 Paper, "Recommended Practice for Pass-Thru Vehicle Programming, December 2004, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships or authorized service networks.
  - (B) Motor vehicle manufacturers shall make available for purchase through reasonable business means to covered persons for vehicle models meeting the requirements of subsection (g)(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 start of vehicle introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.
- (h) Heavy-Duty Engine Enhanced Diagnostic, Recalibration, and Reconfiguration Tools and Information.
  - ~~(1) —~~
  - (1) Diagnostic Tools

- (A) Engine manufacturers shall continue to make available for purchase through reasonable business means all emission-related diagnostic tools currently available to covered persons, including installation software and data files used in such equipment. Beginning with the 2013 model year, engine manufacturers shall also make available for purchase all emission-related enhanced diagnostic tools, recalibration tools, and reconfiguration tools available to franchised dealerships and authorized service networks, including installation software and data files used in such equipment. The engine manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made. As a condition for sale and shipment, however, an engine manufacturer may request that the requesting covered persons to take all necessary training offered by the engine manufacturer. Any required training materials and classes must comply with the following conditions:
1. similar training must be required by the engine manufacturer for the use of the same tool by its franchised dealerships and authorized service networks, and the training required for covered persons must be substantially similar to such training in terms of material covered and length of training classes;
  2. the training must be available within six months after a tool request has been made;
  3. the training must be available at a minimum of one California location; and
  4. the training must be made available to the covered person at a fair, reasonable and nondiscriminatory price.
- (B) Recalibration and reconfiguration software, methods, and parameters shall be made available for purchase through reasonable business means to covered persons. Recalibration information and methods shall be compatible with either SAE J2534-1, December 2004, or the Technology and Maintenance Council's (TMC) Recommended Practice RP1210A, "WindowsECommunication API," July 1999, which are incorporated by reference herein.

- (2) Data Stream and Bi-Directional Control Information.

(A) Beginning with the 2013 model year, engine 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. Engine manufacturers shall make all required 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 engine manufacturer petitions the Executive Officer for approval to refuse to disclose such information ("petition for non-disclosure") to the requesting company or petitions the Executive Officer for additional time to comply ("petition for additional time"). 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:

1. If the evidence demonstrates that the engine manufacturer has a reasonably based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the engine, the petition for non-disclosure will be granted. Engine manufacturers are not required to provide data stream and bi-directional control information that would permit an equipment and tool company's products to modify a California-certified engine or transmission configuration.
2. If the evidence does not demonstrate that the engine manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools that would not cause damage to the engine, the petition for non-disclosure will be denied and the engine manufacturer, as applicable, shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

3. If the engine manufacturer submits a petition for additional time, and satisfactorily demonstrates to the Executive Officer that the motor vehicle manufacturer is able to comply but requires additional time within which to do so, the Executive Officer shall grant the petition and provide additional time to fully and expeditiously comply. Petitions for additional time shall be considered by the Executive Officer on a case-by-case basis.
  - (B) Engine manufacturers may require that tools using information covered under subsection (h)(2)(A) comply with the Component Identifier message specified in SAE J1939-71, dated December 2003, as Parameter Group Number (PGN) 65249 (including the message parameter's make, model, and serial number) and the SAE J1939-81, dated May 2003, Address Claim PGN.
  - (C) An engine manufacturer may require, as a condition of sale of its tools, that the business agreement contain indemnity or "hold harmless" clauses that relieve the engine manufacturer from any liability resulting from damage caused by tools produced by the tool and equipment company that is otherwise not attributable to the data provided by the engine manufacturer.
- (3) The information and tools required by this subsection shall be made available for purchase no later than 180 days after the start of engine introduction into commerce or concurrently with its availability to franchised dealerships or authorized service networks, whichever occurs first.
  - (i) Costs: All information and tools required to be provided to covered persons by this regulation shall be made available for purchase at a fair, reasonable, and nondiscriminatory prices.
  - (j) Motor vehicle manufacturers and engine manufacturers shall not utilize any access code, recognition code or encryption ~~for the purpose of preventing to~~ prevent a vehicle or engine owner from using an emission-related motor vehicle or engine part (with the exception of the powertrain control module, engine control modules and transmission control modules, as applicable), or propulsion-related part that has not been manufactured by that motor vehicle manufacturer or engine manufacturer or any of its original equipment suppliers.



- (k) Trade Secrets: Motor vehicle manufacturers and engine 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 subsections (e) through (h) above, a motor vehicle manufacturer or engine manufacturer shall identify, by brief description on its Internet website, 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 or engine manufacturer has not fully provided all information that is required to be provided under subsections (e) through (h) 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 or engine 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 or engine manufacturer shall, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of this regulation.
    - (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 subsection (k)(3)(B), the motor vehicle manufacturer or engine 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 subsection (k)(3)(A)

- (D) If the parties can informally resolve the matter, the motor vehicle manufacturer or engine 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 or engine manufacturer shall also, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of this regulation.
- (E) If the matter cannot be informally resolved, the motor vehicle manufacturer or engine manufacturer shall, within 30 days from the date that it notified the requesting covered person that it considers the information to be a trade secret, or such longer period the parties may mutually agree upon, 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 or engine manufacturer has made a reasonable and good faith attempt to informally resolve the matter.

(I) Executive Officer Review of Compliance.

(1) Compliance and Certification

- (A) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.
- (B) Additional Information Required at Time of Certification. For zero emission vehicles subject to disclosure of propulsion-related information, the manufacturer shall provide within 30 days upon request [or as part of its application for certification] a list of all serviceable or replaceable parts on the vehicle determined not to be propulsion-related parts. For each such component, the manufacturer shall describe the purpose of the component and the rationale, engineering analysis, or data used by the manufacturer to determine why the component, while properly operating and while malfunctioning, does not meet the definition of propulsion-related part.

- (C) As an alternative to the requirements of subsection (e)(1) to make available only propulsion-related information for applicable zero emission vehicles, a manufacturer may elect to make available information for all vehicle components for applicable zero emission vehicles. Manufacturers selecting this option shall be exempt from the requirements of subsection (l)(1)(B) and the reporting requirements of subsection (f)(6).
- (2) The Executive Officer, ~~through the Chief of the Mobile Source Operations Division (Division Chief),~~ shall periodically audit a motor vehicle manufacturer's or engine 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 and engine 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~~Executive Officer 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 or engine 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 or engine manufacturer. The declaration shall also set forth facts that demonstrate that the requesting covered person has undertaken efforts to resolve the matter informally with the named motor vehicle manufacturer or engine manufacturer.
- (B) The covered person shall concurrently provide a copy of the audit request on the motor vehicle manufacturer or engine manufacturer against whom the request has been filed.

- (C) The ~~Division Chief~~Executive Officer shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer or engine manufacturer is in noncompliance with Health and Safety Code section 43105.5 or this regulation and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the motor vehicle manufacturer or engine manufacturer directly. If the ~~Division Chief~~Executive Officer determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's or engine manufacturer's Internet website. Otherwise, the ~~Division Chief~~Executive Officer shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer or engine manufacturer of his or her determination.
- (4) In conducting any audit, the ~~Division Chief~~Executive Officer may require the motor vehicle manufacturer or engine 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 or engine manufacturer is required to provide to persons engaged in the service and repair industries and to equipment and tool companies under subsections (d) through (h) of this regulation, and
- (B) Any and all reports or records developed or compiled either for or by the motor vehicle manufacturer or engine manufacturer to monitor performance of its Internet site(s).
- (5) In conducting the audit, the ~~Division Chief~~Executive Officer may order or subpoena the motor vehicle manufacturer or engine 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~~Executive Officer may also request or subpoena such persons to provide any additional information that the ~~Division Chief~~Executive Officer 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~~Executive Officer notifies the motor vehicle manufacturer or engine manufacturer about the audit. At the conclusion of the audit, the ~~Division Chief~~Executive Officer shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer or engine manufacturer.
- (7) If the ~~Division Chief~~Executive Officer finds sufficient credible evidence that the motor vehicle manufacturer or engine 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 or engine manufacturer.
- ~~(8) The Division Chief's determination not to issue a notice to comply against a motor vehicle manufacturer or engine manufacturer 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 subsection (1)(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.~~
- ~~1. 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.~~
- ~~2. 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 or engine 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 or engine 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 or engine manufacturer.~~

~~(8) [Reserved]~~

- (9) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer or engine manufacturer shall either:
- (A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer or engine 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 or engine 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 or engine 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 or engine 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 or engine manufacturer to properly remedy the noncompliance. The Executive Officer shall notify the motor vehicle manufacturer or engine manufacturer in writing of his or her determination, and that the Executive Officer will be seeking administrative review pursuant to subsection (m) below.

- (11) After approving a proposed compliance plan, if the Executive Officer determines that the motor vehicle manufacturer or engine manufacturer has failed to comply with the terms of the plan, the Executive Officer shall notify the motor vehicle manufacturer or engine manufacturer of his or her determination and that he or she will be seeking administrative review pursuant to subsection (m) below.
- (m) Administrative Hearing Review.
- (1) A motor vehicle manufacturer or engine manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the motor vehicle manufacturer or engine manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by subsection (l)(9)(A) shall result in the Executive Officer's determination becoming final and may subject the motor vehicle manufacturer or engine manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and subsection (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 subsection (l)(10).
    - (B) A notice to comply that has been issued against a motor vehicle manufacturer or engine 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 or engine 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 60060.1 et seq.
- (n) Penalties.

- (1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer or engine manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer or engine 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 or engine 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 or engine 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 or engine manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13, California Code of Regulations, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.
- (o) Address. Unless otherwise specified, reports, documentation, and requests under this Section must be provided to the California Air Resources Board at the following address: Chief, Emissions Certification and Compliance Division (or Executive Officer if so specified), California Air Resources Board, 4001 Iowa Ave, Riverside, California 92507, or may be submitted electronically upon mutual agreement as provided under sections 1633.7 and 1633.8 of the Civil Code.

Note: Authority cited: Sections 39600, 39601, 43000.5, 43018, 43105.5 and 43700, Health and Safety Code. Reference: Sections 39027.3, 43104 and 43105.5, Health and Safety Code.