

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: June 22, 2006

TIME: 9:00 am

PLACE: South Coast Air Quality Management District
Auditorium
21865 East Copley Drive
Diamond Bar, CA 91765-4182

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 22, 2006, and may continue at 8:30 a.m., June 23, 2006. This item might not be considered until June 23, 2006. Please consult the agenda for the meeting, which will be available at least 10 days before June 22, 2006, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document is available in Braille, large print, audiocassette or computer disk. Please contact ARB's Disability Coordinator at 916-323-4916 by voice or through the California Relay Services at 711, to place your request for disability services. If you are a person with limited English and would like to request interpreter services, please contact ARB's Bilingual Manager at 916-323-7053.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected:

Proposed amendments to title 13, California Code of Regulations (CCR), division 3, chapter 1, 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 2007 and Subsequent Model Heavy-Duty Vehicles, and the documents incorporated therein: Society of Automotive Engineers (SAE) Recommended Practice J2534, "Recommended Practice for Pass-Thru Vehicle Programming," December 2004, and SAE J1979, "E/E Diagnostic

Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002,” April 2002; Technology and Maintenance Council, Recommended Practice RP1210A, “Windows™ Communication API,” July 1999; SAE J1939, “Recommended Practice for a Serial Control and Communications Vehicle Network “ and the associated subparts in SAE HS-1939, Truck and Bus Control and Communications Network Standards Manual,” 2005 Edition; SAE J2403, “Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature,” August 2004

Proposed amendments to title 17, CCR, division 3, chapter 1, subchapter 1.25, article 2.5, Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles, sections 60060.1 through 60060.34.

Background

Senate Bill (SB) 1146, enacted in 2000, established Health and Safety Code section 43105.5, directing ARB to adopt regulations for the availability of emission-related motor vehicle service information and diagnostic equipment to independent service facilities and the aftermarket parts industry. The legislation applies to 1994 and later model-year vehicles equipped with on-board diagnostic (OBD) systems for the detection of emission-related malfunctions. On December 13, 2001, the Board approved adoption of the ARB’s service information regulation, which was formally implemented on March 30, 2003. The requirements as originally adopted applied to 1994 and later model-year passenger cars, light-trucks, and medium-duty vehicles equipped with second generation, on-board diagnostic (OBD) systems. The regulation is found in title 13, CCR, section 1969, with related administrative procedures in title 17, CCR sections 60060.1 through 60060.34.

In 2004, the Board adopted initial OBD requirements for 2007 and later model-year heavy-duty vehicles and, in accordance with the legislation, also expanded the scope of California’s service information requirements to include these vehicles. However, the Board deferred requirements for the availability of manufacturer diagnostic tools and reprogramming equipment for heavy-duty vehicles until diagnostic tool communication requirements were finalized under a second round of more comprehensive OBD requirements for heavy-duty vehicles. The added lead time was granted to address manufacturer concerns that necessary tool-related changes could not be efficiently implemented ahead of knowing these communication requirements in greater detail, and to permit the manufacturers the opportunity to incorporate additional safeguards into the interface between the diagnostic tools and engines.

These more comprehensive heavy-duty OBD requirements were finalized and approved by the Board in July of 2005. Under the regulation, implementation of the diagnostic tool communication requirements would begin with the 2013 model-year. Therefore, the staff is now proposing that the Board expand the requirements for the availability of

manufacturer diagnostic tools to include tools that will be designed for 2013 and later model-year heavy-duty engines. The staff is also proposing additional minor amendments to the regulation to increase consistency between the service information and OBD requirements and to improve the overall clarity and effectiveness of the regulation.

In drafting these proposed regulatory amendments, 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 #MSC 05-01 on January 11, 2005, which explained staff's initial proposed amendments to the service information regulation. Comments submitted in response to the mail-out, as well as those received through numerous subsequent discussions and meetings, were considered in the development of the final proposal.

Proposed Amendments

Below is a brief summary of the staff's proposed amendments to title 13, California Code of Regulations, section 1969, for consideration by the Board:

Availability of Heavy-Duty Vehicle Diagnostic Tools

Staff proposes that manufacturers of 2013 and later model-year, OBD-equipped, heavy-duty engines be required to make available all enhanced emission-related diagnostic, recalibration, and reconfiguration tools provided by the manufacturers to their franchised dealers or authorized service networks. Engine manufacturers would be permitted to require appropriate training on the proper use of these tools as a condition for sale. The associated data stream and bi-directional control information used in these tools would also have to be made available to aftermarket diagnostic tool manufacturers to allow incorporation of the same functionality into their products. Consistent with the existing requirements for the availability of service information and tools, engine manufacturers would be permitted under the regulation to set "fair, reasonable, and non-discriminatory" prices for the availability of heavy-duty tools and related information. The amendments proposed by the staff would also require heavy-duty vehicle engine manufacturers to comply with the recalibration methods set forth in SAE Recommended Practice J2534 or the Technology and Maintenance Council's Recommended Practice RP1210a, "Windows™ Communication API," July 1999 on all 2013 and later model-year on-board computers installed on heavy-duty vehicle engines.

Other Amendments to the Regulatory Language

- Staff is proposing amendments to make clear that heavy-duty transmission manufacturers are not subject to the regulation if transmissions are not required to meet OBD or any other emission control requirements.

- A provision is proposed to permit compliance flexibility for manufacturers that certify vehicles or engines under both medium-duty and heavy-duty vehicle categories, preventing manufacturers from having to comply with more than one set of requirements for a given vehicle or engine model.
- Staff is proposing that engine manufacturers be required to use emission-related nomenclature in all service information that complies with SAE Recommended Practice J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," August 2004, for 2010 and later model year engines. The use of standardized nomenclature will minimize the number of manufacturer-specific terms and acronyms that technicians must become familiar with in order to effectively use manufacturers' service information.
- SAE J2534, incorporated by reference, contains standardization requirements related to the reprogramming of light and medium-duty vehicles. Subsequent to the closing of ARB's 2004 service information amendments, the publication date of the document changed from September 2004 to December 2004. Staff is proposing an amendment to update the publication date in the text of the regulation.
- Other minor revisions are being proposed to update regulatory definitions, provide clarity between light- and heavy-duty requirements, and to improve the readability of the regulation.

COMPARABLE FEDERAL REGULATIONS

The United States Environmental Protection Agency (U.S. EPA) approved amendments to its service information regulation on June 27, 2003. (See Title 40, Code of Federal Regulations, part 86, sections 86.094-38 et seq.) However, federal service information language still does not cover heavy-duty vehicles that exceed 14,000 pounds gross vehicle weight rating. U.S. EPA has stated its intent to consider provisions for these heavy-duty vehicles in the near future.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a detailed summary of the proposed amendments, as well as the potential environmental and economic impacts of the proposal, and supporting technical documentation. The ISOR 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 the 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 Public Information Office, Visitors and Environmental Services Center, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990. The documents will be available at least 45 days prior to the scheduled hearing on June 22, 2006.

Upon its completion, the Final Statement of Reasons (FSOR) will also be made available and copies may be requested from the agency contact persons identified 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, Staff Air Pollution Specialist, at (626) 459-4487 or e-mail dhermano@arb.ca.gov, or Ms. Jackie Lourenco, Chief, New Vehicle/Engine Programs Branch, at (626) 450-6152 or email jlourenc@arb.ca.gov.

Further, the agency representative and designated back-up contact person to whom nonsubstantive 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 contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's Internet site for this rulemaking at <http://www.arb.ca.gov/regact/cmvsip06/cmvsip06.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 amendments 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.

In developing this regulatory proposal, the staff evaluated the potential economic impacts on representative private persons or businesses. Staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed amendments would likely have a small positive cost impact on independent service repair facilities and tool and equipment companies that do business in California because of the greater availability of such tools and related information. Although the proposed amendments may indirectly have some adverse cost impacts on heavy-duty vehicle franchised dealerships and authorized service networks in California due to 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.

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.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business 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. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

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 dealerships 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 Board 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, June 21, 2006**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic submittal : <http://www.arb.ca.gov/lispub/comm/bclist.php> **no later than 12:00 noon, June 21, 2006.**

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at ARB no later than **12:00 noon, June 21, 2006.**

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 Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted 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 was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such an 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 ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

Catherine Witherspoon
Executive Officer

Date: