

State of California
AIR RESOURCES BOARD

Resolution 06-19

June 22, 2006

Agenda Item No.: 06-6-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or the Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, section 43000.5 of the Health and Safety Code finds that emission reductions should be obtained from all classes of vehicles and that the Board should implement both short- and long-range programs to achieve emission reductions from heavy-duty diesel vehicles;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reductions possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, section 43105.5 of the Health and Safety Code requires the Board, to the extent not limited or prohibited by federal law, to adopt regulations that make available emission-related service information for 1994 model year and later motor vehicles to persons engaged in the service and repair of motor vehicles and the manufacture of motor vehicle parts;

WHEREAS, in enacting section 43105.5 of the Health and Safety Code, the State Legislature found that:

There are over 26 million registered motor vehicles in California, and that California residents rely heavily upon those vehicles to conduct their everyday activities;

The use of those motor vehicles results in hundreds of tons of pollutants being emitted into California's air every day, significantly affecting air quality and public health and safety;

It is in the best interests of the state to ensure that California motorists have the ability to obtain service, repair, or replacement of faulty emissions-related components for their motor vehicles and that such ability not be limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers; and

Such a withholding of information from independent automotive repair technicians by vehicle manufacturers may result in improper and needlessly costly repairs that could endanger the public and result in anti-competitive effects harmful to the best interests of the state;

WHEREAS, in section 43700 of the Health and Safety Code the Legislature finds that the reduction of emissions from diesel powered vehicles, to the maximum extent possible, is in the best interests of air quality and public health;

WHEREAS, on-road heavy-duty vehicles will account for as much as 28 percent of the oxides of nitrogen and 16 percent of total particulate matter (PM) emitted from all mobile sources statewide by 2010;

WHEREAS, the occurrence of emission-related malfunctions in heavy-duty vehicles causes them to emit significantly more pollutants into the air than properly maintained heavy-duty vehicles;

WHEREAS, it was the intent of the State Legislature in enacting section 43105.5 of the Health and Safety Code to assure and stimulate competition in the service and repair of all motor vehicles that are equipped with on-board diagnostic (OBD) systems by ensuring that independent service and repair facilities and aftermarket part manufacturers have access to all emission-related information and tools that franchised dealerships and authorized service networks have;

WHEREAS, the Board approved the service information regulation as it applies to light- and medium-duty vehicles on December 13, 2001, and subsequently amended the regulation on January 22, 2004, to incorporate 2007 and later model year heavy-duty vehicles;

WHEREAS, the existing service information regulation includes requirements for 2007 and later model year heavy-duty service information in conjunction with the OBD requirements approved by the Board on May 20, 2004;

WHEREAS, the existing service information regulation does not include requirements for the availability of heavy-duty tools and related information in conjunction with the Board's OBD regulation for 2010 and later model year heavy-duty engines approved by the Board on July 21, 2005;

WHEREAS, the United States Environmental Protection Agency (U.S. EPA) promulgated amendments to the federal service information regulation that are applicable to 1994 model year and later light- and medium-duty motor vehicles, but not to heavy-duty vehicles or engines as defined by ARB;

WHEREAS, the staff has proposed amendments to ARB's regulations regarding the availability of motor vehicle service information in California, including adding availability requirements for heavy-duty tools and related information, addressing how the requirements apply to transmission manufacturers, providing compliance flexibility for manufacturers that produce both medium- and heavy-duty products, and improving the overall effectiveness of the regulations; these amendments are set forth in Attachments A and B hereto;

WHEREAS, the Board has considered the effects of the proposed amendments on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the Board has considered the environmental impacts of the regulation as they pertain to all residents of California, including low-income and minority communities, pursuant to Government Code section 65040.12(c);

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the Board finds that:

The prompt and effective repair of emission-related malfunctions from heavy-duty engines will minimize the amount of excess emissions caused by such malfunctions;

Pursuant to title 13, California Code of Regulations, section 1971.1, ARB requires the use of OBD systems for heavy-duty vehicles beginning with the 2010 model year;

Health and Safety Code section 43105.5 applies to all 1994 and later model year vehicles, including heavy-duty vehicles, equipped with OBD systems;

The heavy-duty vehicle manufacturing process is usually conducted by multiple entities, including engine, transmission, and chassis manufacturers, whereas light-duty vehicles are typically constructed by a single manufacturer;

Heavy-duty transmission manufacturers are not subject to the provisions of the service information regulation and are not required to provide service information to the aftermarket industry;

For purposes of the regulations being amended in this rulemaking, an engine manufacturer is 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;

The availability of diagnostic tools and data stream and bi-directional control information used on heavy-duty vehicles will help ensure that the independent service industry and tool companies have access to all equipment and information necessary to effectively repair emission-related malfunctions and build equivalent tools;

The availability of recalibration and reconfiguration tools and information used on heavy-duty engines will ensure that the independent service and repair industry is able to install on-board computer software updates issued by engine manufacturers, and to properly configure repaired vehicles;

Potential misuse of heavy-duty diagnostic and reprogramming tools should be abated by allowing engine manufacturers the option of requiring training classes before such tools are made available to the aftermarket industry for purchase;

Engine manufacturers need compliance flexibility because of similar engine technology and common service industry practices for medium- and heavy-duty gasoline engines and for medium- and heavy-duty diesel engines; to address this, the amendments approved herein allow, except with respect to implementation dates, heavy-duty gasoline engine manufacturers to elect to comply with the light- and medium-duty vehicle service information requirements and medium-duty diesel engine manufacturers to elect to comply with the heavy-duty engine service information requirements;

Other minor amendments approved herein to the service information regulation are necessary to enhance implementation and enforcement of the regulation; the amendments to the service information regulation and to sections 60060.1 through 60060.34, title 17, California Code of Regulations that define "engine manufacturer" are necessary in order to distinguish manufacturers of heavy-duty engines from light- and medium-duty motor vehicle manufacturers;

The costs of all emission-related service tools and information must be fair, reasonable, and nondiscriminatory;

The economic and fiscal impacts of the proposed amendments to the service information regulations have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Notice and Initial Statement of Reasons for this rulemaking; and

The amendments approved herein to the service information regulation will neither have any significant adverse impact on the environment nor will it adversely impact environmental justice communities;

WHEREAS, the Board further finds that:

While the amendments approved herein to the service information regulation will not create new emission reductions, they will ensure that the emission benefits attributed to ARB's heavy-duty emission reduction programs and heavy-duty OBD regulations are achieved;

Adoption of the service information regulation amendments will help independent service facilities and aftermarket part manufacturers to compete effectively with franchised dealerships and authorized service networks for consumers' business;

Adoption of the service information regulation amendments will provide consumers with a greater choice in who services their vehicles, thereby making it more likely that they will have their vehicles repaired when an emission-related problem occurs; and

There is no feasible alternative considered by the Board that would be more effective in carrying out the purposes of Health and Safety Code section 43105.5 or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendment of section 1969, title 13, California Code of Regulations, as set forth in Attachment A hereto, and the amendment of sections 60060.1 through 60060.34, title 17, California Code of Regulations, as set forth in Attachment B, with the modifications set forth in Attachment C.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the proposed amendments as approved herein, with such other modifications as may be appropriate after considering the testimony and comments received at the hearing and after making the modified regulatory language available for public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modifications as may be submitted during this period, make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if the Executive Officer determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs staff to continue to monitor whether heavy-duty engine manufacturers develop and implement OBD systems that monitor transmission components and parts and, if so, to consider amendments to the service information regulation to address the needs of the aftermarket for transmission-related service information.

BE IT FURTHER RESOLVED that the Board finds that the service information regulation is not an emission standard, accompanying enforcement procedure, or a condition precedent to sale of vehicles in the state and accordingly is not preempted by section 209(a) of the Clean Air Act.

I hereby certify that the above is a true and correct copy of Resolution 06-19, as adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board

Resolution 06-19

June 22, 2006

Identification of Attachments to the Resolution

Attachment A: Proposed Amendments to California Code of Regulations, title 13, division 3, chapter 1, article 2, section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty and Medium-Duty Vehicles, as set forth in Attachment A to the Initial Statement of Reasons released May 5, 2006.

Attachment B: Proposed Amendments to California Code of Regulations, title 17, 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, as set forth in Attachment B to the Initial Statement of Reasons released May 5, 2006.

Attachment C: Staff's Suggested Modifications to the Original Proposal (distributed at the June 22, 2006 Board Hearing)

Attachment C

Proposed 15-Day Changes to the Proposed Amendments for the Availability of California Motor Vehicle Service Information

(To be considered by the Board at the June 22, 2006, hearing)

This document is printed in a style to indicate changes from the existing provisions in title 13, California Code of Regulations, section 1969. All existing language is indicated by plain type. All proposed additions to language as described in Attachment A of staff's Initial Statement of Reasons issued on May 5, 2006, are indicated by underlined text and all proposed deletions to language are indicated by ~~strikeout~~. The proposed 15-day modifications and additions below are indicated by double underline, while deletions are indicated by ~~double strikeout~~.

-- Modify 1969(b)(1):

Motor vehicle manufacturers that produce ~~gasoline-derived~~ 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 ~~motor vehicle~~ engine manufacturers.

Reason: Additional flexibility needs to be provided for medium-duty engine manufacturers that produce diesel-derived engines that are also used in heavy-duty vehicles, and who wish to continue complying with the light- and medium-duty service information provisions. Staff is also proposing that implementation dates for compliance should meet those for engine manufacturers because the subject engines would be used in heavy-duty vehicles, for which service information would not be required until the 2007 model year, and tools until the 2013 model year.

-- Modify 1969(b)(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 ~~engine~~ motor vehicle manufacturers.

Reason: Staff is proposing that engine manufacturers of diesel-derived engines used in medium-duty vehicles comply with the implementation dates applicable to motor vehicle manufacturers when choosing to optionally comply with the service information provisions for heavy-duty vehicles. This is to ensure that medium-duty

vehicles produced before the 2010 model year have emission-related service information and tools available.

-- Add the following definition in 1969(d):

“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.

Reason: Staff is defining the term “diesel-derived engine” as used in subsection 1969(b)(2) of the regulation.

-- Modify 1969(d)(7)(B):

“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, but not including the transmission. For the purposes of this regulation, if an engine manufacturer elects to have its OBD system monitor emissions related to the transmission, the engine manufacturer is responsible for making relevant transmission system information available pursuant to subsection (e)(2); it shall also make available pursuant to subsection (e)(1), all corresponding repair information needed to repair the malfunction and turn off the malfunction indicator light.**

Reason: While staff has proposed to delete requirements for transmission manufacturers to make their information available to covered persons, engine manufacturers should still make available heavy-duty transmission information that is related to the operation of the vehicle’s OBD system. Although the engine manufacturer may not know what transmission will be mated to its engines, it does specify the monitors, trouble codes, enabling criteria, etc. associated with detecting emission-related transmission malfunctions. Therefore, this type of OBD information should be made available for purchase by covered persons. Furthermore, the repair information corresponding to an OBD-detected fault should be made available to covered persons if it is made available to a manufacturer’s franchised dealerships. The engine manufacturer is not expressly required to monitor the transmission under the heavy-duty OBD regulation, but if it elects to do so, it is the party most in control of obtaining and making available to covered persons the information that it provides to its franchised dealerships and authorized service networks. If such information were not provided to covered persons, they would be in a distinct disadvantage in servicing

malfunctioning transmission-related diagnostics, which could result in operators of heavy-duty vehicles not going to independent service facilities when the malfunction indicator light illuminates.

-- Modify 1969(e)(1):

- (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, as applicable, that is provided to the motor vehicle manufacturer's or engine manufacturer's franchised dealerships or authorized service networks for the engine, ~~transmission~~, 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.

Reason: The separate terms for "emission-related motor vehicle information" and "emission-related engine information" are specified in this section in order to be consistent with the same terms defined in subsections (d)(7) and (d)(8). For purposes of clarity, the requirements for manufacturers electing to comply with one of the options of section 1969(b) have been specifically delineated.

-- Modify 1969(f)(2)(K):

- (K) Complies with the following requirements for terms, definitions, abbreviations, and acronyms:
- (i) For 2003 and subsequent model-year passenger cars, light duty trucks and medium-duty engines and vehicles, C~~omplies~~ with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2: April 30, 2002," May 1998 April 2002, incorporated by reference herein, for all emission-related motor vehicle information. This subsection only applies to passenger cars, light-duty trucks, and medium-duty vehicles beginning with the 2003 model year. A motor vehicle manufacturer that produces engines for use in heavy-duty vehicles and that chooses to comply with the medium-duty service information and tool provisions of this regulation pursuant to subsection (b)(1), shall make available for purchase on its

website cross-reference information for heavy-duty engine service technicians that explains the different terms, definitions, abbreviations, and acronyms used in passenger car, light-duty truck, and medium-duty vehicle service information.

- (ii) 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, incorporated by reference herein. An engine manufacturer that produces diesel-derived engines for use in medium-duty vehicles and that chooses to comply with the heavy-duty service information and tool provisions of this regulation pursuant to subsection (b)(2), shall make available for purchase on its website cross-reference information for technicians who normally work on medium-duty vehicles that explains the different nomenclature used in heavy-duty engine service information.

Reason: Staff proposes that motor vehicle manufacturers and engine manufacturers provide explanations of all applicable terms, definitions, abbreviations, acronyms, and nomenclature when choosing to use the optional compliance provisions in subsections (b)(1) and (b)(2). This will respectively allow heavy-duty service facilities to understand medium-duty terminology and medium-duty service facilities to understand heavy-duty terminology.

-- **Modify 1969(g)(2):**

- (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 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. 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 unsafe or inaccurate tools produced by the tool and equipment company that are otherwise not attributable to the data provided by the motor vehicle manufacturer. Heavy-duty engine and transmission manufacturers are exempt from these requirements as they apply to enhanced data stream information and bi-directional control information. The mMotor 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:

Reason: See reason for the addition of section 1969(h)(2)(C). Staff believes that this section should be consistent with similar language proposed for the data stream and bi-directional provisions for heavy-duty engines.

-- Modify sections 1969(g)(3)(A) and 1969(h)(1)(B), respectively:

(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, September December 2004, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships or authorized service networks.

(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, “Windows™ Communication API,” July 1999, which are incorporated by reference herein.

Reason: Staff is proposing to correct the reference to the Society of Automotive Engineers (SAE) Recommended Practice J2534.

-- Add section 1969(h)(2)(C):

(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 unsafe or inaccurate tools produced by the tool and equipment company that are otherwise not attributable to the data provided by the engine manufacturer.

Reason: Engine manufacturers are concerned about aftermarket tools that contain their data stream or bi-directional control information. They have consequently requested specific language that does not impose any responsibility on them in the event that an equipment or tool company uses the information to produce unsafe or inaccurate tools. Staff’s proposed language addresses this concern.