

California Motor Vehicle Service Information Rulemaking Status

(Annual Report to the California State Legislature
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ABSTRACT:

The purpose of the service information regulation is to ensure that independent service facilities, tool companies, and aftermarket part manufacturers have access to the same types of emission-related service information and tools that vehicle and engine manufacturers provide to franchised dealerships. The Air Resources Board (ARB or Board) originally adopted the regulation in December 2001 pursuant to Health and Safety Code (HSC) section 43105.5, and implementation began on March 30, 2003. As required by HSC section 43105.5(g), this is the fourth annual report to the State legislature on the effectiveness of the regulation. It covers the 2005 calendar year.

Overall, manufacturers appear to be in continued compliance with the regulatory requirements. Based on the general absence of concerns brought to the attention of ARB staff, users of the information appear to be satisfied with the content, format, and cost of the information and tools available to them.

The ARB staff is currently developing proposed amendments to the regulation that would expand the requirements for the availability of manufacturer diagnostic tools to include those designed for use on heavy-duty engines. The Board is currently scheduled to consider adoption of these requirements in June of this year.

BACKGROUND:

The use of advanced emission control systems has allowed motor vehicle manufacturers and engine manufacturers to meet stringent emission standards necessary for California's attainment of ambient air quality goals. However, continued compliance with these low emission levels depends on the proper operation of the emission control systems built into the vehicles. Emission-related malfunctions can cause vehicle emission levels to greatly exceed certification standards. Current light- and medium-duty vehicles sold in California are equipped with OBD systems that detect the occurrence of these malfunctions. Manufacturers of heavy-duty engines are required to begin meeting initial OBD requirements with the 2007 model year. Full compliance with stringent and comprehensive OBD requirements is required by 2013.

When a malfunction is detected by an OBD system, the "check engine" or "service engine soon" light illuminates on the vehicle's instrument panel, and diagnostic information is stored in the on-board computer. By using this information to quickly identify and repair emission-related problems, the lifetime emissions from motor vehicles can be minimized. However, because emission levels are not reduced until the vehicle is successfully repaired, it is critical that independent service technicians have access to the information and diagnostic tools necessary to effectively utilize OBD system information, and to carry out necessary repair work for identified problems. The availability of compatible

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aftermarket replacement parts is also important to the repair process. If there is not an adequate supply of needed replacement parts at reasonable prices, the repair of emission-related malfunctions may be conducted improperly or postponed indefinitely by the vehicle owner.

Independent service providers have not always had access to the information and tools that are provided to franchised dealerships by vehicle and engine manufacturers. In creating Health and Safety Code section 43105.5, the authorizing Senate Bill 1146 made the finding that “to prevent unnecessary pollution, it is in the best interests of this state to ensure that the ability of California motorists to obtain service, repair, or replacement of faulty emissions-related components of their motor vehicles is not limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers.” Furthermore, the Legislature found that “the withholding of essential service, repair, and parts information and tools by vehicle manufacturers from independent automotive repair technicians and independent aftermarket parts manufacturers may result in improper and needlessly costly repairs that could also endanger the public and result in anticompetitive effects harmful to the best interests of the state.”

SUMMARY OF REQUIREMENTS:

The ARB’s regulation is codified in title 13, California Code of Regulations (CCR), section 1969 and Title 17, CCR, sections 60060.1 through 60060.34. The main regulatory provisions are described below. The complete text of the regulation along with other supplemental information can be found at <http://www.arb.ca.gov/msprog/cmvsip/cmvsip.htm>.

A. Applicability

The service information regulation applies to 1994 and later model year light- and medium-duty vehicles equipped with OBD systems, and to 2007 and later model year heavy-duty engines and vehicles equipped with OBD systems.

B. Service Information

Most emission-related service information is text-based information routinely used to complete service and repairs on consumer vehicles. This information includes, but is not limited to, service manuals, technical service bulletins, wiring diagrams, troubleshooting procedures, and training materials. All such emission-related service information that is available to franchised dealerships must also be made available to independent technicians and aftermarket part companies. The regulation specifically requires that text-based service information, at a minimum, be made available directly via the Internet.

C. On-Board Diagnostic System Descriptions

Motor vehicle and engine manufacturers must make available general descriptions of the design and operation of their OBD systems. These descriptions include the system monitoring parameters, diagnostic trouble codes, enabling conditions, monitoring sequence, malfunction thresholds, and “mode 6” data. This information helps service technicians to better understand the conditions under which malfunctions are detected.

D. Diagnostic Tools and Reprogramming Equipment

Manufacturers must offer for sale the same emission-related diagnostic tools that are provided to franchised dealerships and authorized service networks. This ensures the availability of dealership-quality tools to the aftermarket, and provides for improved diagnosis and repair of emission-related malfunctions.

The regulation also requires manufacturers to make emission-related enhanced data stream information¹ and bi-directional control information² used in dealer tools available to aftermarket tool manufacturers. This information enables automotive diagnostic tool manufacturers to incorporate similar functionality into their generic tools.

Heavy-duty engine and transmission manufacturers are currently exempt from both of the above requirements. However, the ARB staff plans to propose tools availability requirements for 2010 and later model year heavy-duty vehicles for Board consideration later this year.

E. Immobilizer Information

Motor vehicle manufacturers are required to make available to the service and repair industry initialization procedures used by dealerships for vehicles equipped with integrated anti-theft systems known as immobilizers. A manufacturer is required to provide such procedures when necessary for installation of on-board computers, or for repair or replacement of other emission-related parts. The procedures must rely on commonly available tools in order to prevent the need to purchase special tools.

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

² “Bi-directional control information” typically consists of commands issued by a technician using a scan tool to override normal vehicle operation in order to activate a device or computer routine for diagnostic purposes.

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F. Cost of Service Information

All required service information and diagnostic tools must be offered for sale at “fair, reasonable, and nondiscriminatory prices” to ensure equal access to service information and tools. Actual prices for service information and tools are not specified by the ARB in the regulation. Instead, manufacturers are required to apply factors to their prices to determine if they are appropriate. These include the costs to prepare and distribute the information, the costs charged by other vehicle manufacturers, and the ability of an aftermarket technician to afford the information.

G. Trade Secret Disclosure

The regulation contains provisions for manufacturers to withhold trade secret information that would otherwise have to be disclosed. It permits manufacturers to initially withhold information that it believes to be trade secret (as defined in the Uniform Trade Secret Act contained in Title 5 of the California Civil Code). This information must be identified on the manufacturer’s service information website. Covered persons that believe the information is not a trade secret may request the manufacturer in writing to make the information available. If resolution cannot be reached informally, the manufacturer would be required to petition the California superior court to obtain an exemption from disclosure.

H. Compliance Review Procedures

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

I. Administrative Hearing Procedures

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

J. Non-Compliance Penalties

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

REGULATORY UPDATE:

In January 2004, the Board approved amendments to the regulation that expanded its applicability to cover 2007 and later model year heavy-duty vehicles. The amendments required that manufacturers of heavy-duty vehicles equipped with manufacturer-based OBD systems (called Engine Manufacturer Diagnostics or EMD) comply with the majority of the text-based service information requirements for light-duty vehicles, except for the provisions that would require the availability of emission-related diagnostic and reprogramming tools, and their related data information.

Based on manufacturers' concerns about misuse of the capabilities that these tools offer, staff agreed to defer heavy-duty vehicle tools availability requirements until the time that revised OBD system requirements were considered by the Board for 2010 and later model year heavy-duty engine applications. Those OBD requirements were presented at the July 2005 hearing, and were approved by the Board.

Subsequently in late 2005, staff began drafting amendments to the service information regulation that would require that all emission-related, heavy-duty tools and information be made available by the 2013 model year. The 2013 model year marks the end of the phase-in period for the OBD requirements that begin in 2010, and also the model year that OBD data standardization requirements take effect. These and a number of more minor regulatory amendments are scheduled for Board consideration in June 2006.

COMPARABLE FEDERAL REGULATIONS:

The United States Environmental Protection Agency (U.S. EPA) has its own regulation for service information.³ It is comparable to California's service information with respect to most of the provisions. ARB staff worked closely with the U.S. EPA during development of each agency's regulations to ensure that California and federal requirements were harmonized as much as possible. The purpose of the harmonization is to minimize the regulatory burden on motor vehicle and engine manufacturers.

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

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Notwithstanding, some differences do exist. The federal regulation does not currently apply to heavy-duty vehicles as defined by ARB (i.e., greater than 14,000 pounds), although the U.S. EPA has stated its intent to expand its regulation to do so in the near future. Furthermore, the federal regulation ensures information access only to the service and repair industry, while ARB's service information regulation also requires the aftermarket parts and tool industry to be given access to information and tools. With respect to enforcement, the provisions in ARB's regulation for review of manufacturer compliance with the service information requirements are substantially different from those under federal law. These differences exist primarily because the Health and Safety Code mandates the broader scope of the California regulation and the framework for the regulation's enforcement.

The U.S. EPA had started work during 2005 on an audit program project that would allow independent technicians the opportunity to evaluate light-duty manufacturer websites for service information. The purpose of this program is to evaluate how complete and effective manufacturers' websites are in making available the required information and tools. Technicians would have short-term access to service information websites and would fill-out a 50-page questionnaire about the reviewed website using a numerical ranking scale for each answer. The questions focus on website ease of use and the ability to find desired service information.

ARB staff participated in this effort as a member of the program's steering committee. The program was scheduled to start in April 2005 and end by June 2005, but has been delayed to ensure that the audit was in compliance with the federal Office of Management and Budget's (OMB's) Information Collection Request requirements. OMB approval was received in late 2005 and the U.S. EPA is presently in the process of implementing the audit program. Once completed, the results will be made available in a public report.

IMPLEMENTATION STATUS:

As required by the service information regulation, all major light- and medium-duty vehicle manufacturers have operational service information websites on the Internet. Heavy-duty engine manufacturers are not required to do so until the 2007 model year, and small-volume manufacturers (i.e., less than 300 vehicles/engines sold in California annually) are exempted from providing their service information on Internet websites. Most manufacturers offer time-based subscriptions that range in length from 24 hours to one year. Eight manufacturers charge for service information per document, and two manufacturers offer free access to emissions-related service information. Table 1 below contains a list of manufacturers' websites and related access charges:

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**Table 1:
Service Information Websites
(as of March 2006)**

Manufacturer	Website Address	Pricing		
		Short-Term	Month	Year
Acura	https://www.techinfo.honda.com	\$20.00 (72 hr)	\$50.00	\$250.00 ↓
AM General*	http://www.amgeneral.com	Documents Individually Priced		
Audi	https://www.bentleypublishers.com/ebahn/audi	\$50.00 (3 day)	\$200.00	\$1,000
BMW	http://www.bmwtechinfo.com	\$25.00 (24 hr)	\$300.00	\$2,500.00
Bentley*	http://www.bentleytechinfo.com	Documents Individually Priced		
Chrysler	http://www.techauthority.com	\$20.00 (24 hr)	\$200.00	\$1,500.00
Ferrari*	http://www.ferraritechinfo.com/	Documents Individually Priced		
Ford	http://www.motorcraftservice.com	\$19.95 (72 hr)	\$299.95	\$2,499.95
General Motors	http://www.gmdealerworld.com	\$20.00 (24 hr); \$45.00 (5 day)	\$150.00	\$1,200.00
Honda	https://www.techinfo.honda.com	\$20.00 (72 hr)	\$50.00	\$250.00 ↓
Hyundai	http://www.hmaservice.com	Free		
Infiniti	http://www.infinititechinfo.com	\$19.99 (24 hr)	\$299.98	\$2,499.98
isuzu	http://www.isuzusource.com	\$20.00 (24 hr)	\$150.00	\$1,650.00
Jaguar	http://www.jaguartechinfo.com	\$35.00 (24 hr)	\$211.00	\$1,228.00
Kia	http://www.kiatechinfo.com	Free ↓		
Lamborghini*	http://www.lamborghini.com	Documents Individually Priced		
Land Rover	http://www.landrovertechinfo.com	\$20.00 (24 hr)	\$150.00	\$500.00
Lexus	http://techinfo.lexus.com	\$10.00 (24 hr)	\$50.00	\$350.00
Lotus	http://www.lotuscars.com	Documents Individually Priced		
Mazda	http://www.mazdatechinfo.com	19.95 (24 hr)	\$199.95; \$900 (6 mo)	\$1,500.00
Maserati*	http://www.maseratitechinfo.com/	Documents Individually Priced		
Mercedes-Benz	http://www.startekinfo.com	\$18.00 (24 hr) \$95.00 (7 day)	\$275.00	\$2,950.00
Mini	http://www.minitechinfo.com	\$25.00 (24 hr)	\$300.00	\$2,500.00
Mitsubishi	http://www.mitsubishitechinfo.com	\$19.95 (24 hr) \$99.95 (7 day)	\$249.99; \$999.99 (6 mo)	\$1,499.95

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<u>Manufacturer</u>	<u>Website Address</u>	<u>Pricing</u>		
		<u>Short-Term</u>	<u>Month</u>	<u>Year</u>
Nissan	http://www.nissantechinfo.com	\$19.99 (24 hr)	\$299.98	\$2,499.98
Porsche	https://techinfo.porsche.com	\$110/document	N/A	\$5,200.00
Rolls-Royce*	http://www.rrtis.com	Documents Individually Priced		
Saab	http://www.saabtechinfo.com	\$10.00	\$75.00; \$180.00 (3 mo)	\$500.00
Subaru	http://techinfo.subaru.com	\$34.95 (72 hr)	\$299.95	\$2,499.95
Suzuki	http://www.suzukitechinfo.com	Documents Individually Priced		
Toyota	http://techinfo.toyota.com	\$10.00 (24 hr)	\$50.00	\$350.00
Volkswagen	https://www.bentleypublishers.com/ebahn/volkswagen	\$50.00 (3 day)	\$200.00	\$1,000.00
Volvo	http://www.volvotechinfo.com	\$12.50 ↓ (3 day)	\$33.75 ↓	\$245.00 ↓

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

↓ Indicates that the noted price has been reduced since the 2004 legislative report.

Manufacturer subscription pricing has, with a few exceptions, remained relatively unchanged since 2004. Honda/Acura has cut its yearly subscription price from \$500 to \$250, and Volvo has reduced all of its subscription prices. A few other manufacturers have modified their pricing options. Kia Motors has changed its service information website from being subscription-based to providing free access. Suzuki and Lotus have now opted for individual document pricing while Audi and Volkswagen have reverted to subscription pricing.

Very few issues regarding access to service information websites have been received by staff. However, ARB continues to investigate the pricing policies of one light-duty manufacturer for its data stream and bi-directional control information. Since 2004, the staff has been concerned that the manufacturer's prices for this information may not fall within the definition of "fair, reasonable, and nondiscriminatory," especially when weighed under the criteria of the regulation. Namely, the price to purchase an information license appears much higher than that charged by other manufacturers for comparable information.

Although the manufacturer maintains that its pricing methods are reasonable based on its calculations of the value of this intellectual property, it offered an option that would allow an aftermarket tool company to instead pay a royalty percentage to the manufacturer. It believes that smaller aftermarket equipment manufacturers would find the option less costly. The aftermarket, however, does not believe that this alternative is better based on its belief that the manufacturer could profit even more than with the original flat fee. Therefore, staff and the

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concerned parties are still working to find an acceptable resolution to this issue. The U.S. EPA is also involved in the investigation of this matter. Staff anticipates reaching a resolution to the issue by the end of the 2006 calendar year.

Minor omissions of service information on the websites identified by ARB staff during informal audits have been quickly resolved. These omissions have been primarily related to missing OBD descriptions, and have involved only three or four manufacturers. ARB did not receive any complaints from the aftermarket during the 2005 calendar year concerning difficulty in accessing desired service information directly from the websites. It is likely that manufacturers too are either not receiving any such complaints, or are resolving them directly with the aftermarket.

In reviewing manufacturer annual reports for 2005 regarding their websites, staff has found that they have been generally successful in complying with the requirements outlined in the regulation despite the few issues discussed above. Subscription information from large-volume vehicle manufacturers generally indicates that demand for the websites has been on a steady climb, especially for daily subscriptions. Daily subscriptions continue to outnumber monthly and yearly subscriptions by a factor of about ten to one. Notwithstanding, there was an overall increase for all subscriptions types as compared to the previous calendar year.

Manufacturers generally reported that their websites have an uptime of about 99 percent or better. Except for routine maintenance, only one significant offline event occurred during the year. Subscribers were notified of the event via email and were credited with an additional 24 hours of subscription time. Website reliability has continued to be consistent since implementation of the service information regulation began in 2003.

Website access varied among manufacturers, ranging from 100 to 500 visits daily, but has steadily increased from the previous year. Failed page requests have been minimal with most manufacturers having a successful "hit" percentage of at least 98%. This minor decrease from 99% the previous year may be due to some manufacturers redesigning how their websites are formatted and organized. ARB staff will continue to work with manufacturers as needed to reduce the incidence of website downtime and to address any other obstacles to fast and reliable access to website information.

As expected, the most active day for using these service information websites is Tuesday, when most independent service facilities begin their workweeks. Most visitors spend an average of 30 minutes at a service information website.

CONCLUSION:

California's service information regulation continues to be effective in making emission-related repair information and tools more accessible to all independent service facilities, aftermarket part manufacturers, and tool companies. The addition of 2007 and later model year heavy-duty vehicles to the applicability of the regulation expanded the regulation's reach and helps ensure that the new OBD technology used on these vehicles will be useful to parties that repair heavy-duty vehicles. Staff is proposing new heavy-duty tools requirements this year that are also necessary to properly diagnosis and repair these engines.

The use of the Internet for the dissemination of service information also continues to be well-received by the aftermarket industry, and motor vehicle manufacturers have been largely successful in making required information and tools available for purchase from their websites with few technical issues. Staff expects to see heavy-duty websites come online this year as required by the regulation. Prices for service information appear to have been set at fair, reasonable, and nondiscriminatory levels for the most part, and complaints were minimal during 2005. As a result, no enforcement penalties were assessed during the reporting period.

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Questions or concerns regarding issues related to the service information availability program may be directed to the following ARB staff:

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