

California Motor Vehicle Service Information Rulemaking Status

(Annual Report to the California State Legislature for the Calendar
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ABSTRACT:

The Air Resources Board's (ARB or Board) service information requirements were developed pursuant to the requirements of Senate Bill 1146 (SB 1146), which was introduced during the 1999-2000 Legislative session and enacted Health and Safety Code (HSC) section 43105.5. Subdivision (h) of section 43105.5 directs the ARB to report annually to the Legislature, through 2009, on the effectiveness of the regulations that it has adopted to implement the provisions of SB 1146.

The ARB considered the regulation implementing SB 1146 at a public hearing on December 13, 2001 and formally adopted the regulation on July 29, 2002. As directed by the Legislature, the regulation requires motor vehicle manufacturers to make available to the aftermarket service industry service information and emission-related diagnostic tools for 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles equipped with second-generation on-board diagnostic systems (OBD II). By its provisions, the regulation becomes effective on March 30, 2003.

In anticipation of the regulation's effective date, motor vehicle service information and tools are becoming more and more readily available to the aftermarket service industry. The ARB staff has been meeting with motor vehicle manufacturers to discuss their progress toward meeting these regulations, and to address questions and concerns that have arisen. As directed by the Board, the ARB staff is also working with affected stakeholders to resolve specific issues of controversy regarding portions of the regulation.

BACKGROUND:

Motor vehicles are a major source of pollutants that affect California's air quality. Emissions from the vehicle population increase as vehicles develop emission-related malfunctions through use and age. Proper motor vehicle maintenance and the timely repair of malfunctions help to minimize lifetime vehicle emissions.

The importance of making service information available to the aftermarket industry has been recognized both nationally and in California since the inception of OBD II systems in motor vehicles. These OBD II systems alert vehicle owners when emission-related malfunctions occur, and provide service technicians with information regarding the nature of the problem. Complete emission-related service information is needed to enable technicians to repair identified problems. In the past, independent service providers have not always been able to obtain the same level of information that has been available to franchised dealerships.

Authored by the Honorable John Burton, SB 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 also 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.” Enacted on September 30, 2000, the statute required the ARB to adopt regulations to accomplish the objectives of the legislation by January 1, 2003.

SUMMARY OF THE ADOPTED REGULATIONS:

To meet the provisions of SB 1146, the ARB adopted, on December 13, 2001, a regulation that requires motor vehicle manufacturers to make available all emission-related service information, including service manuals, technical service bulletins, OBD II descriptions, and training materials, over the Internet. This information must have the same level and quality of documentation that is available to franchised dealerships.

The regulation also requires vehicle manufacturers to offer for sale all emission-related diagnostic tools that are used by dealership technicians, along with the necessary information that would allow aftermarket tools to have the same diagnostic capabilities that dealer tools possess. Similarly, the regulation requires that motor vehicle manufacturers make available to the aftermarket equipment necessary to install updated on-board computer software. Also included in the regulation is a requirement for manufacturers to provide information related to initializing on-board computers (also known as electronic control units, or ECU) equipped with immobilizers if such information is necessary for installation of the computer, or the repair and replacement of other emission-related parts.

The regulation requires motor vehicle manufacturers to make the specified information and tools available at a “fair, reasonable, and nondiscriminatory price.” In enforcing compliance with this requirement, the ARB will consider the criteria set forth in the definition of the term. These criteria consider both the motor vehicle manufacturer’s ability to recover the costs of making the information available and the covered person’s ability to afford the information. The definition of “nondiscriminatory” also prevents motor vehicle manufacturers from setting prices that give dealerships an unfair economic advantage over covered persons.

Under the regulation, initial non-compliance determinations will be made by the ARB’s Executive Officer who would issue a notice to comply to the affected motor vehicle manufacturer. The manufacturer alleged to be in noncompliance would have the option of submitting a compliance plan to remedy the non-

compliance or requesting an administrative review of the Executive Officer's determination. The Executive Officer would also be able to request an administrative hearing for appropriate action and/or civil penalties to be imposed in cases where a manufacturer does not act in response to a notice to comply, files an unacceptable compliance plan, or fails to follow through on a compliance plan approved by the Executive Officer. A civil penalty of up to \$25,000 per day could be imposed on manufacturers that fail to remedy a finding of noncompliance.

The ARB's final regulation and accompanying staff report, which discusses the regulation's provisions in greater detail and its impact on California's environment and economy, are included with this report (see Attachments 1 and 2).

COMPARABLE FEDERAL REGULATIONS:

The United States Environmental Protection Agency (U.S. EPA) promulgated regulations regarding the availability of service information in 1995.¹ The regulations require that beginning with the 1994 model year, motor vehicle manufacturers are to make available to the aftermarket service and repair industry emission-related service information. The federal regulation required the manufacturers to list all service-related information on an online database called FedWorld. However, many independent repair shops and part companies felt that FedWorld was cumbersome, difficult to use, and did not always have the information they were looking for. On June 8, 2001, the U.S. EPA issued in a Notice of Proposed Rulemaking² requesting comments on amendments to the regulation that further improve the availability of service information. Similar to the ARB's service information rulemaking, the amendments would require motor vehicle manufacturers to directly provide service information for 1996 and later vehicles on individual Internet websites rather than listing the information on FedWorld. To promote consistency between federal and state provisions, it was staff's intent to harmonize California's regulations with the proposed amendments of the U.S. EPA, to the extent possible. Minor differences exist in regards to pricing determinations, Internet performance reporting, initialization information, and training materials, but none of these differences is likely to cause conflict in the implementation of either regulation. The ARB staff anticipates that many of these differences can be addressed during its rulemaking update in December 2003, assuming the federal rule is finalized by then.

As of the release date of this report, the proposed federal amendments have not been finalized. They are however, expected to be approved during the first quarter of 2003. The amendments will take effect six months after they are finalized.

¹ 40 Code of Federal Regulations, part 86, section 86.094-38.

² The Notice of Proposed Rulemaking may be obtained from the following Internet weblink: <http://www.epa.gov/otaq/vehserv.htm>

CURRENT IMPLEMENTATION STATUS:

Staff is continuing to meet with motor vehicle manufacturers on their progress towards making service information available on the Internet as required by the regulation. A number of manufacturers already have at least some service information available via the internet and all have expressed confidence of being fully functional and compliant before the implementation date of March 30, 2003. See Attachment 3 for a table of manufacturer service information websites that have been formally presented to staff.

Regarding diagnostic tools and related information, current U.S. EPA regulation requires manufacturers to either sell their dealership diagnostic tools to independent service providers or make available information that would allow aftermarket diagnostic tool manufacturers to duplicate the functions contained in the dealer tools. As a result, much of the information that will be required by the ARB's regulation when it takes effect is already available today. For example, staff checked with the Equipment and Tool Institute (ETI), an aftermarket trade association that collects and distributes diagnostic information for vehicles, to determine which motor vehicle manufacturers make their general tool information available to the automotive service industry. More than two-thirds of the motor vehicle manufacturers, including all of the major manufacturers, provide service information (including text-based repair information and information for developing generic diagnostic tools) in various degrees of completeness to members of ETI. Additionally, ETI indicated that all manufacturers make their emission-related diagnostic tools available. ETI is confident that the content of the information will improve upon implementation of the state regulation. Attachment 4 is a matrix created by the National Automotive Task Force that shows the service information and tools available from motor vehicle manufacturers.

UPCOMING REGULATORY ACTIVITIES:

When the Board considered the regulation for adoption in December 2001, it directed the ARB staff to report back within two years on the status of its implementation of the final regulation. It further directed staff to propose necessary amendments to address any problems or issues of clarity that may have arisen in the initial period of implementation. The Board also asked the staff to continue working with stakeholders to resolve issues relating to "immobilizer" system information availability.

Motor vehicle manufacturers currently use immobilizer anti-theft devices on many models. The basic purpose of immobilizer systems is to electronically disable engine starting, except when the right keys for the vehicle are used. Vehicle manufacturers have indicated that this type of passive security system has proven to be very effective in deterring auto theft.

In the event that a vehicle's ECU needs to be replaced, the original keys will no longer start the car unless the immobilizer circuitry is reinitialized. Specifically, the new ECU must be enabled to recognize the key's response. Other emission-related repairs may also require immobilizer reinitialization. Typically, this service requires the use of a manufacturer specific diagnostic tool and procedures.

In development of the regulation, the independent service industry argued that motor vehicle manufacturers need to release more immobilizer-related information. According to the industry, such information is needed to facilitate the independent repair industry's ability to conduct emission-related repairs that require reinitialization of the systems and the ability of the aftermarket parts industry to remanufacture ECU's as a source of replacement parts. Vehicle manufacturers have been reluctant to provide detailed information regarding these systems out of a concern that the information could be misused to circumvent the security system on in-use vehicles.

Prior to the adoption of the regulation, the ARB staff and stakeholders were able to agree on immobilizer information requirements that would satisfy the needs of independent repair facilities. The regulation incorporated this agreement. It requires motor vehicle manufacturers to share the tools and procedures that they provide to their franchised dealerships with independent service facilities or, if a manufacturer has security concerns in releasing the information to the independent facilities, that it provide them with an equally effective alternative.

The regulation, as adopted, however, did not specifically address the needs for immobilizer information raised by the aftermarket part remanufacturers. Pursuant to the Board's direction, the staff has met, and is continuing to meet, with stakeholders to explore potential solutions that address the concerns of both motor vehicle manufacturers and parts remanufacturers on this issue, in preparation for the December 2003 hearing.

CONTACTS:

If you have further concerns regarding these or any other issues related to the service information rulemaking, please direct them to either Mr. Allen Lyons (alyons@arb.ca.gov), Chief, Mobile Source Operations Division, at (626) 575-6918, Mr. Michael Terris (mterris@arb.ca.gov), Legal Counsel, at (916) 445-9815, or Mr. Dean Hermano (dhermano@arb.ca.gov), Staff Engineer, at (626) 459-4487.

Attachments (4)

ATTACHMENT 1:
Final Regulation Order

ATTACHMENT 2:

Initial Statement of Reasons (Staff Report)

ATTACHMENT 3:

Known Service Information Websites Demonstrated to ARB Staff

ATTACHMENT 4:

**National Automotive Service Task Force (NASTF) Service Information
Matrix**