

State of California
Air Resources Board

UPDATED INFORMATIVE DIGEST

**ADOPTION OF REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA
MOTOR VEHICLE SERVICE INFORMATION**

Sections Affected: Adoption of title 13, California Code of Regulations (CCR), section 1969, Motor Vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty and Medium-Duty Vehicles and the documents incorporated by reference therein: “Society of Automotive Engineers (SAE) Recommended Practice J1930, May 1998,” “SAE J1979, September 1997,” and “SAE J2534, February 2002.”

Adoption of title 17, CCR, sections 60060.1 through 60060.34, Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles.

Background: Health and Safety Code section 43105.5¹ directed the Air Resources Board (ARB) to develop regulations no later than January 1, 2002, that require manufacturers of 1994 and later model year passenger cars, light-duty trucks and medium-duty vehicles to make available emission-related service information to the automotive repair industry. The ARB has adopted regulations to implement these service information requirements and procedures for administrative review of Executive Officer determinations of non-compliance.

In drafting the regulation, the ARB staff met with the United States Environmental Protection Agency (U.S. EPA), motor vehicle manufacturers, aftermarket parts manufacturers, trade associations and other interested parties in various meetings and via phone calls. Staff issued two mail-outs (reference documents: #MSO 2001-04 and #MSO 2001-09) that respectively presented staff's initial and revised draft proposals. Numerous written comments from the aforementioned parties were submitted to the ARB in response to the two mail-outs, which were considered in the development of the final proposal. The staff also held a public workshop on April 18, 2001, to discuss the first draft proposal. The ARB's Initial Statement of Reasons (#MSO 2001-11) for the rulemaking was released on October 26, 2001. On December 13, 2001, the proposal was approved by the Board with modifications. These modifications were made available for public comment in the staff's Notice of Public Availability of Modified Text, released March 29, 2002 (MSO #2002-02).

¹ Health and Safety Code section 43105.5 was created by Senate Bill 1146 (SB1146), enacted September 30, 2000.

Comparable Federal Regulations

The United States Environmental Protection Agency (U.S. EPA) promulgated regulations regarding the availability of service information in 1995.² The regulations require that beginning with the 1994 model year, motor vehicle manufacturers were 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. On June 8, 2001, the U.S. EPA proposed in a Notice of Proposed Rulemaking (NPRM), 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 its 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, and training materials, but none of these differences is likely to cause conflict in the implementation of either regulation. As of the release date of this Informative Digest, the proposed federal amendments have not been finalized.

The Regulation: As required by Health and Safety Code section 43105.5, staff specified that the regulation apply generally to all 1994 model year and later passenger cars, light-duty, and medium-duty vehicles certified to California's On-Board Diagnostic II (OBD II) requirements. The regulation will also apply to the same vehicles and trucks that comply with future OBD requirements. Currently, section 1968.1(k)(2.1) of the OBD II regulation requires motor vehicle manufacturers to comply with limited service information provisions. It is staff's intent that these regulations, to the extent that they are effective and operative, will supersede those provisions. In accordance with the requirements of Senate Bill 1146 (SB1146), the regulation includes the following:

- *Availability of emission-related service information*

The regulation requires the availability of all emission-related service information provided to franchised dealerships, including service manuals, technical service bulletins, and training materials. This information must be made available to "covered persons." A covered person is any of the following: (1) persons or entities licensed with the Bureau of Automotive Repair, (2) persons or entities engaged in the service and repair of vehicles belonging to a business fleet, (3) tool and equipment companies, and (4) persons or entities engaged in the manufacturer or remanufacturer of emission-related parts. Additionally, motor vehicle manufacturers must also

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

provide OBD II system description information for 1996 model year and later vehicles.

- *Immobilizer information*

The regulation requires motor vehicle manufacturers to provide initialization procedures used by dealerships for vehicles equipped with integrated anti-theft systems (known as immobilizers) when such procedures are necessary for installation of on-board computers or in repair and replacement of other emission-related parts. A provision to permit additional time for full compliance with this requirement, through the 2007 model year, was proposed (in the Notice of Public Availability of Modified Text) in cases where the motor vehicle manufacturer would need to make design changes to the immobilizer system in order to ensure that disclosure of the procedures will not compromise vehicle security.

Rebuilders of on-board computers have commented that they should also be permitted to obtain such immobilizer information in order to bench test the computers outside the vehicle. In response to such comments, the Board directed the staff at the December 13, 2001, hearing to monitor the progress of making such information available to rebuilders, as well as making sure the release of the information will not increase the likelihood of vehicle theft.

- *Internet availability*

Consistent with the provisions of Health and Safety Code, section 43105.5, the regulation requires motor vehicle manufacturers to make emission-related service information available on the Internet in full text. The information must be maintained online for a minimum of 15 years. Manufacturers that produce less than 300 vehicles annually in California may choose to use another viable business mean(s) for information access. Further, these small-volume manufacturers need only provide Internet access to service information for new vehicle models, not carryover models, produced after the manufacturer exceeds the 300 vehicle limit.

- *Availability of diagnostic and reprogramming tools and information*

Motor vehicle manufacturers are required to make available to covered persons the same diagnostic tools and information they provide to their dealerships. They are also required to provide generic diagnostic toolmakers with necessary information that will allow them to develop tools with the same diagnostic capabilities as the tools manufactured by the motor vehicle manufacturer. The regulation also requires motor vehicle manufacturers to make the on-board computer reprogramming equipment and information that they provide to dealerships available to independent service providers. For 2004 and later model year vehicles, the regulation requires motor vehicle

manufacturers to standardize reprogramming of on-board computers in accordance with Society of Automotive Engineers' Recommended Practice J2534. This requirement eliminates the need for manufacturer-specific reprogramming tools.

Lastly, the regulation provides motor vehicle manufacturers with the option to petition the Executive Officer refuse to provide data stream and bi-directional control information to certain tool and equipment companies. Under the regulation, the Executive Officer would grant such petitions if based on a reasonable belief that the subject company could not produce a safe and functionally equivalent diagnostic tool.

- *Requirements for fair, reasonable, and nondiscriminatory pricing*

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.

- *Implementation Dates*

Compliance with the requirements begins 180 days after the effective date of these regulations or January 1, 2003, whichever is later for vehicle models introduced into commerce on or before the effective date of the regulation. For vehicle models introduced into commerce after the effective date of the regulation, compliance is required 180 days from the date of introduction of the vehicles, or concurrent with availability of the information covered by these regulations to franchised dealerships, whichever occurs first.

- *Trade secret disclosure*

The regulation does not direct motor vehicle manufacturers to divulge service information that can be classified as trade secret material pursuant to the Uniform Trade Secret Act, section 3426 et. seq. of the Civil Code. The regulation sets forth procedures for motor vehicle manufacturers and covered persons to attempt to informally resolve the release of disputed material. If unsuccessful, the motor vehicle manufacturer would be required to petition the California superior court for declaratory relief.

- *Compliance Review Procedures*

Motor vehicle manufacturers are required annually to provide the Executive Officer with reports that demonstrate that the performance of their individual Internet websites meets the requirements of title 13, CCR, section 1969(e)(2). The Executive Officer could require manufacturers to submit additional reports upon request, including reports required by the U.S. EPA under the Federal Service Information Rule.

The regulation provides the Executive Officer with authority to conduct periodic audits of manufacturer websites to determine compliance with the provisions of the regulation. In addition, the regulation allows covered persons to request that the Executive Officer conduct an audit of a specific motor vehicle manufacturer that it believes to be in noncompliance with the regulations. If, after conducting an audit, the Executive Officer determines that a manufacturer is not in compliance, the Executive Officer would be required to issue a notice to comply against the manufacturer.

- *Administrative Hearing Procedures*

Upon being served with a notice to comply, a motor vehicle manufacturer is required to either submit a compliance plan to the Executive Officer or request an administrative review hearing to contest the noncompliance. To properly enforce the regulations, the procedures further require that the Executive Officer seek administrative review of certain determinations that have found a manufacturer to be in noncompliance. Specifically, the regulation requires the Executive Officer to seek compliance orders against a manufacturer who has (1) been issued a notice to comply and has failed either to request administrative review of the notice or, in the alternative, to submit a compliance plan; (2) filed a compliance plan that the Executive Officer has found to be unacceptable; or (3) failed to comply with the terms of a compliance plan that had been accepted by the Executive Officer.

Consistent with Health and Safety Code section 43105.5(e) and (f), the regulation requires that Executive Officer determinations of manufacturer noncompliance be subject to administrative hearing procedures that will be codified at Title 17, CCR section 60060 et seq. The procedures closely parallel other administrative hearing procedures that have been adopted by the ARB. (See Title 17, CCR section 60055 through 60075.45.) The procedures include, among other things, general procedural requirements regarding a party's right to representation and reasonable accommodation, and the filing of motions. Provisions also cover the authority of hearing officers to conduct hearings and procedures for the filing of requests for review. Other provisions set forth prehearing procedures, including the right to discovery and procedures for the conduct of hearings, including, introduction of evidence.

Finally, the procedures set forth requirements for the issuance of decisions and orders by the hearing officer, including penalty assessments, and the right of parties to seek judicial review of a hearing officer's final decision.

- *Penalties*

As provided by Health and Safety Code section 43105.5(f), the regulations allow the administrative hearing officer to assess penalties, not to exceed \$25,000 per day per violation, for failure to take corrective action after a compliance order has been issued by the hearing officer. Such penalties could be assessed if corrective action is not undertaken within 30 days (or such longer time that the hearing officer deems appropriate) from the date of the compliance order. For purposes of this section, all issues of noncompliance that are covered by the compliance order would be considered a single violation.