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Arnold Schwarzenegger
Governor

MEMORANDUM

TO: Craig Tarpenning
Senior Staff Counsel
Office of Administrative Law

FROM: Michael Terris
ARB Legal Office

DATE: January 12, 2005

SUBJECT: OAL REGULATORY ACTION NUMBER 04-1124-04S

Pursuant to your findings in reviewing the above-referenced Rulemaking, the Air Resources Board (ARB) hereby authorizes you to correct the rulemaking record as follows:

1. Substitute the revised Table of Contents, referencing the Supplemental Final Statement of Reasons and this Transmittal Memo, attached hereto.
2. Please add the enclosed 15-day modification of text, which was attached to the first 15-Day Notice of Availability of Modified Text, released on August 6, 2004.
3. Substitute the attached Initial Statement of Reasons ("ISOR") for the ISOR version that was incorrectly sent to you. The attached ISOR, which was made publicly available on December 5, 2003, correctly cites to the second-referenced document, SAE J2403. The first-referenced document, J1939, was inadvertently included as a reference to the rulemaking record. It was intended merely as a placeholder in the ISOR, but, ultimately, its substance was not relied upon in considering or adopting the regulation.
4. Substitute December 2004 as the date of publication for the document SAE J2534. The document is cited on page 11 of the Final Regulation Order, section 1969(f)(3)(A). In the proposed regulation that was initially made available with the 45-Day Notice, the date of publication of the draft was listed as December 2003. SAE subsequently informed the ARB staff that the final publication date would be September 2004, and thus the ARB's 15-day change. (See First 15-Day Notice of Availability of Modified Text ("First 15-Day Notice"). SAE recently informed us that final publication was further delayed until December 2004. At that time, SAE's representative stated that there were no substantive changes made to the J2534 document that was initially referenced by the ARB in this rulemaking.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

5. In the First 15-Day Notice, the ARB deleted the provision that required heavy-duty vehicle manufacturers to make diagnostic tools available to the aftermarket service industry. In making this determination, the ARB balanced the immediate need of the aftermarket for diagnostic tools against the potential concerns of heavy-duty vehicle and engine manufacturers regarding safety and liability from misuse of such tools. The ARB determined that because the ARB would initially be implementing elementary on-board diagnostic regulations (otherwise referred to as Engine Manufacturer Diagnostics) that the manufacturers' concerns regarding safety and liability outweighed the need of the aftermarket for immediate use of diagnostic tools. The ARB postponed consideration of the requirements for making diagnostic tools available until which time the ARB considers adoption of a more comprehensive on-board diagnostic ("OBD") regulation. At this time, the ARB plans on holding a public hearing to consider adoption of comprehensive heavy-duty OBD requirements in July 2005. The availability of diagnostic tools to the aftermarket will be considered as part of that rulemaking.
6. Attached hereto is a Supplemental Final Statement of Reasons that addresses comments from and agency responses to the Engine Manufacturers Association's *Detailed Comments of Heavy-Duty Aspects of ARB DRAFT SIR Proposal*, dated January 21, 2004. These comments were inadvertently overlooked when preparing the initial Final Statement of Reasons.
7. The reference to (j)(8)(A) in section (k)(1) of the Final Regulation Order should be changed to (j)(9)(A). Likewise the reference in (k)(2)(A) of the Final Regulation Order should be changed to (j)(10).
8. Substitute the enclosed revised rulemaking file Closing Certification statement to be attached to the table of contents at the beginning of the rulemaking file.
9. Replace the computer disc containing the regulation text with the new disc containing the corrected regulation text.

Thank you for your assistance in this matter.

Attachments