

## ATTACHMENT 2

Title 13, California Code of Regulations, Division 3, Chapter 1, Motor vehicle Pollution Control Devices, Article 2, Approval of Motor vehicle Pollution Control Devices (New Vehicles); Section 1969, Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-duty and Medium-Duty Vehicles and 2007 Heavy-Duty Vehicles

Set forth in this attachment are proposed amendments to title 13 of the California Code of Regulations. The originally proposed amendments as set forth in the Staff Report issued on December 5, 2003 (Mail-Out MSO #2003-06), are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. Modifications made after issuance of Mail-Out MSO #2003-06 are shown in **bold double-underline** to indicate additions to the initial proposal and **~~bold strikeout~~** to indicate deletions.

## Proposed Regulation Order

Section 1969, title 13, California Code of Regulations, chapter 1, Motor vehicle Pollution Control Devices:

Article 2. Approval of Motor vehicle Pollution Control Devices (New Vehicles)

### §1969 **Motor vehicle Service Information – 1994 and Subsequent Model Passenger Cars, Light-Duty, and Medium-Duty Vehicles, and Heavy-Duty Vehicles**

(a) Applicability.

- (1) ~~Unless otherwise noted, this section shall apply to:~~ (1) all California-certified 1994 and subsequent model-year passenger cars, light-duty trucks and medium-duty vehicles equipped with on-board diagnostic (OBD) systems pursuant to title 13, California Code of Regulations, sections 1968.1 or 1968.2; and (2) all **2007 and subsequent model year** California-certified **heavy-duty** engines and transmissions **equipped with diagnostic systems certified to pursuant to title 13, California Code of Regulations, section 1971** ~~the OBD requirements for heavy-duty vehicles adopted by the Air Resources Board.~~ This section shall supersede the provisions of section 1968.1(k)(2.1) at all times that this section is effective and operative. These regulations shall also apply to any passenger cars, light-duty trucks, **and** medium-duty **vehicles**, and heavy-duty vehicles certified to future on-board diagnostic requirements adopted by the Air Resources Board.
- (2) **Motor vehicle manufacturers shall comply with amendments made to this section no later than 90 days after such amendments are made effective by the Secretary of State. Copies of any amendments to this section may be obtained upon request to the Chief of the Mobile Source Operations Division at 9528 Telstar Avenue, El Monte, California 91731.**

- (b) Severability of Provisions. If any provision of this section or its application is held invalid, the remainder of the section and the application of such provision to other persons or circumstances shall not be affected.
- (c) Definitions. The definitions in section 1900(b), Division 3, Chapter 9, Title 13 of the California Code of Regulations, apply with the following additions:
- (1) “Access codes, recognition codes and encryption” mean any type, strategy, or means of encoding software, information, devices, or equipment that would prevent the access to, use of, or proper function of any emission-related part.
- (2) “Authorized service network” means a group of independent service and repair facilities that are recognized by motor vehicle manufacturers

as being capable of performing repairs to factory specifications, including warranty repair work.

- (2 3) "Bi-directional control" means the capability of a diagnostic tool to send messages on the data bus (if applicable) that temporarily override a module's control over a sensor or actuator and give control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.
- (3 4) "Covered person" means: (1) any person or entity engaged in the business of service or repair of motor vehicles, engines, or transmissions who is licensed or registered with the Bureau of Automotive Repair, pursuant to Section 9884.6 of the Business and Professions Code, to conduct that business in California; (2) any commercial business or government entity that repairs or services its own California motor vehicle fleet(s); (3) tool and equipment companies; or (4) any person or entity engaged in the manufacture or remanufacture of emission-related motor vehicle parts for California motor vehicles and motor vehicle engines.
- (4 5) "Data stream information" means information that originates within the vehicle by a module or intelligent sensor (including, but not limited to, a sensor that contains and is controlled by its own module) and is transmitted between a network of modules and intelligent sensors connected in parallel with either one or two communications wires. The information is broadcast over communication wires for use by other modules such as chassis or transmission modules to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration-related information.
- (5 6) "Days" means calendar days (unless otherwise specified in this section); in computing the time within which a right may be exercised or an act is to be performed, the day of the event from which the designated period runs shall not be included and the last day shall be included, unless:
- ~~(A) for purposes of section 1969(e), the last day falls on a Sunday, or a California-recognized holiday observed by the subject motor vehicle manufacturer, in which case the last day shall be the following day;~~
- ~~(B) for all other purposes, the last day falls on a Saturday, Sunday, or a California-recognized holiday observed by the subject motor vehicle-manufacturer, in which case the last day shall be the following day.~~
- (6 7) "Emission-related motor vehicle information" means 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 powertrain system including, but not limited to, the fuel system and ignition system.
- (C) Any original equipment system or component that is likely to impact emissions, including, but not limited to, the transmission system.
- (7 8) “Emission-related motor vehicle part” means any direct replacement automotive part or any automotive part certified by Executive Order that may affect emissions from a motor vehicle or engine, including replacement parts, consolidated parts, rebuilt parts, remanufactured parts, add-on parts, modified parts and specialty parts.
- (8 9) “Enhanced data stream information” means data stream information that is specific for a motor vehicle manufacturer’s brand of tools and equipment.
- (9 10) “Enhanced diagnostic tool” means a diagnostic tool that is specific to the motor vehicle-manufacturer’s vehicles.
- (10 1) “Fair, reasonable, and nondiscriminatory price”, for the purposes of section 1969, means a price that allows motor vehicle manufacturers to be compensated for the cost of providing required emission-related motor vehicle service information and diagnostic tools considering the following:
  - (A) The net cost to the motor vehicle manufacturers’ franchised dealerships or and authorized service networks for similar information obtained from motor vehicle manufacturers, less any discounts, rebates or other incentive programs;
  - (B) The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included;
  - (C) The price charged by other motor vehicle manufacturers for similar information;
  - (D) The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000 the applicability of this section;
  - (E) The ability of an average covered person to afford the information.
  - (F) The means by which the information is distributed;
  - (G) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use; and
  - (H) Inflation; and
  - (I) ~~Any additional criteria or factors considered by the United States Environmental Protection Agency for the determination of service information costs under federal regulations.~~

- (142) "Initialization" or "reinitialization" means the process of resetting a vehicle security system by means of an ignition key or access code(s).
- (13) "Intermediary information repository" means any individual or entity, other than a motor vehicle manufacturer, which collects and makes available to covered persons service information and/or information related to the development of emission-related diagnostic tools.
- (14) "Motor vehicle manufacturer," for the purposes of section 1969, means:
- (A) Any manufacturer of 1994 ~~model year~~ and ~~later subsequent model year~~ passenger cars, light-duty trucks, and medium-duty vehicles equipped with OBD systems pursuant to title 13, California Code of Regulations, sections 1968.1 and 1968.2, or;
- (B) Any manufacturer that has certified ~~in California~~ a ~~2007 and subsequent model year~~ heavy-duty engine or transmission ~~to the OBD requirements as adopted by the Air Resources Board equipped with an on-board diagnostic system.~~
- (125) "Nondiscriminatory" as used in the phrase "fair, reasonable, and nondiscriminatory price" means that motor vehicle manufacturers shall not set a price for emission-related motor vehicle service information or tools that provides franchised dealerships ~~or and~~ authorized service networks with an unfair economic advantage over covered persons.
- (16) "On-board diagnostic system" or "OBD system" for purposes of this section means any system certified to meet the requirements of title 13, California Code of Regulations, Section 1968.1, 1968.2, 1971, or future OBD requirements adopted by the Air Resources Board.
- (1367) A "Reasonable business mean" is a method or mode of distribution or delivery of information that is commonly used by businesses or government to distribute or deliver and receive information at a fair, reasonable, and nondiscriminatory price. A reasonable business mean includes, but is not limited to, the Internet, first-class mail, courier services, intermediary information repositories, and fax services.
- (d) (1) Service Information: Except as expressly provided specified below, motor vehicle manufacturers shall make available for purchase to all covered persons all emission-related motor vehicle information that is provided to the motor vehicle manufacturer's franchised dealerships ~~or and~~ authorized service networks for ~~subject the~~ engine, transmission, or vehicle models they have certified in California. 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 of a motor vehicle manufacturer's training classroom.
- (2) On-Board Diagnostic System (OBD II) Information. Motor vehicle manufacturers shall make available for purchase to all covered

persons, a general description of each OBD II system used in 1996 and subsequent model-year vehicles, which shall include the following:

- (A) A general description of the operation of each monitor, including a description of the parameter that is being monitored.
- (B) A listing of all typical OBD II diagnostic trouble codes associated with each monitor.
- (C) A description of the typical enabling conditions for each monitor to execute during vehicle operation, including, but not limited to, minimum and maximum intake air and engine coolant temperature, vehicle speed range, and time after engine startup. Motor vehicle manufacturers must also make available all existing monitor-specific OBD drive cycle information for all major OBD monitors as equipped including, but not limited to, catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas recirculation, secondary air, and air conditioning system. As applicable, manufacturers of diesel vehicles, engines, or transmissions must also list make available all existing monitor-specific drive cycles information for those vehicles that perform misfire, fuel system, and comprehensive monitoring under specific driving conditions (i.e., non-continuous monitoring).
- (D) A listing of each monitor sequence, execution frequency and typical duration.
- (E) A listing of typical malfunction thresholds for each monitor.
- (F) For OBD II parameters for specific vehicles that deviate from the typical parameters, the OBD II description shall indicate the deviation and provide a separate listing of the typical values for those vehicles. Subject to Executive Officer approval, manufacturers may consolidate typical value listings into a range of values or another acceptable format if the number of typical parameters is unduly burdensome to list.
- (G) ~~For passenger cars, light-duty trucks, and medium-duty vehicles, identification and scaling information necessary to interpret and understand data available to a generic scan tool through "mode 6," pursuant to Society of Automotive Engineers (SAE) J1979, which is incorporated by reference in title 13, CCR, sections 1968.1 and 1968.2. Heavy-duty engine, vehicle, and transmission manufacturers shall use the recommended practice(s) referenced in title 13, California Code of Regulations, section 1971, to provide information necessary to interpret "mode 6" data.~~
- (H) Except as provided below, the information required by this subsection **shall does** not include specific algorithms, specific software code or specific calibration data beyond **that those** required to be made available through the generic scan tool

pursuant to the requirements of sections 1968.1, 1968.2, **1971**, and all future adopted OBD regulations for passenger cars, light-duty trucks, and medium- and heavy-duty vehicles, **except where such a** Algorithms, codes, or data **that** are made available to franchised dealerships **or and** authorized service networks **shall be made available to covered persons upon request**. To the extent possible, motor vehicle manufacturers shall organize and format the information so that it will not be necessary to divulge specific algorithms, codes, or calibration data considered to be a trade secret by the motor vehicle manufacturer.

(3) On-Board Computer Initialization Procedures.

(A) Consistent with the requirements of subsection (h) below, motor vehicle manufacturers shall ~~provide~~ make available for purchase to all covered persons computer or anti-theft system initialization information ~~and/or related tools~~ for vehicles **or engines** so equipped necessary for:

- (i) The proper installation of on-board computers on motor vehicles that employ integral vehicle security systems; or
- (ii) The repair or replacement of any other emission-related part.

(B) Motor vehicle manufacturers must make this information available for purchase in a manner that will not require a covered person to purchase enhanced diagnostic tools to perform the initialization. Motor vehicle manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.

(B C) A motor vehicle manufacturer may request Executive Officer approval to be excused from the requirements above for some or all model year vehicles through the 20097 model year. The Executive Officer shall approve the request upon ~~him or her~~ finding that the motor vehicle manufacturer has demonstrated that:

(i) The availability of such information to covered persons would significantly increase the risk of vehicle theft, ~~and~~;

**(ii) A technical and economic need for such a request exists; and**

(iii) It will make available to covered persons reasonable alternative means to install computers, or to otherwise repair or replace an emission-related part, at a fair, reasonable, and nondiscriminatory price and that such alternative means do not place covered persons, as a class, at a competitive disadvantage to franchised dealerships **or and** authorized service networks in their ability to service and repair vehicles.

(a) Any alternative means shall be available to covered persons within 24 hours of the initial request and shall not require the purchase of enhanced diagnostic tools to

perform an initialization. Alternatives may include lease of such tools, but only at a fair, reasonable and nondiscriminatory price.

(b) In lieu of leasing its enhanced diagnostic tools, a manufacturer may alternatively make available for purchase to independent equipment and tool companies all data stream information needed to make their diagnostic tools fully functional for initialization purposes. Any manufacturer choosing this option must release the information to equipment and tool companies within 60 days of Executive Officer approval.

(G D) The All approvals is are conditional and subject to audit under paragraph (j) below and possible rescission if the conditions set forth in paragraph (d)(3)(B C) fail to be satisfied.

~~(4) The information in this subsection shall be made available for purchase no later than 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 these dates. For all new vehicle models for which production commences after the effective date of these regulations, motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of engine or vehicle introduction into commerce or concurrently with its availability of the information to franchised dealerships **or and** authorized service networks, whichever occurs first.~~

(e) (1) Information required to be made available for purchase under subsection (d), excluding paragraph (d)(3), shall be directly accessible via the Internet. As an exception, motor vehicle manufacturers with annual California sales of less than 300 engines, transmissions, or vehicles (based on the average number of California-certified engines, transmissions, or vehicles sold by the motor vehicle manufacturer in the three previous consecutive model years) have the option not to provide required materials directly over the Internet. Such motor vehicle manufacturers may instead propose an alternative reasonable business means for providing the information required by this section to the Executive Officer for review and approval. The alternate method shall include an Internet website that adequately specifies that the required service information is readily available through other reasonable business means at fair, reasonable, and nondiscriminatory prices. If a manufacturer later exceeds the three-year ~~vehicle~~ sales average, it would be required to begin complying with all Internet availability requirements the next model year. In such cases, the requirements would apply only to those engine, transmission, and vehicle models certified in that and subsequent model years and would



- not apply to any models that were within carry-over test groups that were initially certified before the sales average was exceeded.
- (2) For purposes of making the information available for purchase via the Internet, motor vehicle manufacturers, or their designees, shall establish and maintain an Internet website(s) that:
- (A) Is accessible at all times, except during times required for routine and emergency maintenance. Routine maintenance shall be scheduled after normal business hours. If the motor vehicle manufacturer's service information website(s) is not available for more than 24 hours for other than routine maintenance, the motor vehicle manufacturer shall notify the Executive Officer by either phone or email within one business day.
  - (B) Houses all of the required information such that it is available for direct online access **(i.e., for online viewing and/or file downloading)**, except as provided in subsections (d)(3), (e)(2)(G) and (e)(2)(J). In addition to direct **online** access, motor vehicle manufacturers may concurrently offer the information by means of electronic mail, fax transmission, or other reasonable business means.
  - (C) Is written in English with all text using readable font sizes.
  - (D) Has clearly labeled and descriptive headings or sections, has an online index connected to a search engine and/or hyperlinks that directly take the user to the information, and has a comprehensive search engine that permits users to obtain information by various query terms including, but not limited to, **engine, transmission, or** vehicle model **(as applicable)**, model year, bulletin number, diagnostic procedure, and trouble code.
  - (E) Provides, at a minimum, e-mail access for communication with a designated contact person(s). The contact person(s) shall respond to any inquiries within 2 days of receipt, Monday through **Saturday Friday**. The website shall also provide a business address for the purposes of receiving mail, including overnight or certified mail.
  - (F) Lists the most recent updates to the website. Updates must occur concurrently with the availability of new or revised information to franchised dealerships **or and** authorized service networks, **whichever occurs first**.
  - (G) Provides all training materials offered by the motor vehicle manufacturer **useful for self-study outside of a motor vehicle manufacturer's training classroom**. For obtaining any training materials that are not in a format that can be readily downloaded directly from the Internet (e.g., instructional tapes, full-text information associated with bundled software, CD-ROMs, or other media), the website must include information on the type of

- materials that are available, and how such materials can be purchased.
- (H) Offers media files (if any) and other service information documents in formats that can be viewed with commonly available software programs (e.g., Adobe Acrobat, Microsoft Word, RealPlayer, etc.).
  - (I) Provides secure Internet connections (i.e., certificate-based) for transfer of payment and personal information.
  - (J) Provides ordering information and instructions for the purchase of motor vehicle manufacturer emission-related enhanced diagnostic tools and reprogramming information pursuant to subsection (f).
  - (K) Complies with the SAE Recommended Practice J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms," May 1998, incorporated by reference herein, for all emission-related motor vehicle information. **This subsection applies only to** for passenger cars, light-duty trucks, and medium-duty vehicles beginning with the 2003 model year. **For heavy-duty engines and vehicles to OBD regulations adopted by the ARB, emission-related nomenclature shall comply with SAE Recommended Practice J2403, "Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature," October 1998, incorporated by reference herein.**
  - (L) Complies with the following website performance criteria:
    - (i) Possesses sufficient server capacity to allow ready access by all users and has sufficient downloading capacity to assure that all users may obtain needed information without undue delay.
    - (ii) Broken weblinks shall be corrected or deleted weekly.
    - (iii) Website navigation does not require a user to return to the motor vehicle manufacturer's home page or a search engine in order to access a different portion of the site. The use of "one-up" links (i.e., links that connect to related webpages that preceded the one being viewed) is recommended at the bottom of subordinate webpages in order to allow a user to stay within the desired subject matter.
    - (iv) Any manufacturer-specific acronym or abbreviation shall **be hyperlinked to be defined in** a glossary webpage **which, at a minimum, is hyperlinked by each webpage that uses such acronyms and abbreviations or pop-up window that explains its meaning. Motor vehicle manufacturers may request Executive Officer approval to use alternate methods to define such acronyms and abbreviations. The Executive Officer shall approve such methods if the motor vehicle manufacturer adequately demonstrates**

**that the method provides equivalent or better ease-of-use to the website user.**

- (M) Indicates the minimum hardware and software specifications required for satisfactory access to the website(s).
- (3) All information must be maintained by the motor vehicle manufacturer for a minimum of fifteen years. After such time, the information may be retained in an off-line electronic format (e.g., CD-ROM) and made available for purchase in that format at fair, reasonable, and nondiscriminatory prices upon request. Motor vehicle manufacturers shall index their available archived information with a title that adequately describes the contents of the document to which it refers. Motor vehicle manufacturers may allow for the ordering of information directly from the website, or from a website hyperlinked to the manufacturer website. In the alternative, manufacturers shall list a phone number and address where covered persons can call or write to obtain requested information through reasonable business means.
- (4) Motor vehicle manufacturers must implement fair, reasonable, and nondiscriminatory pricing structures ~~that provide for relative to~~ a range of time periods for online access (e.g., in cases where information can be viewed online) and/or the amount of information purchased (e.g., in cases where information becomes viewable after downloading). These pricing structures shall be submitted to the Executive Officer for review concurrently with being posted on the motor vehicle manufacturer's service information website(s).
- (5) Motor vehicle manufacturers must provide the Executive Officer with free, unrestricted access to their Internet websites. Access shall include the ability to view and download posted service information. The information necessary to access the websites (e.g., user name, password, contact person(s)) must be submitted to the Executive Officer once the websites are operational.
- (6) Reporting Requirements. Motor vehicle manufacturers shall provide the Executive Officer with reports that adequately demonstrate that ~~the performance of~~ their individual Internet websites meets the requirements of subsection (e)(2). **The reports shall also indicate the performance and effectiveness of the websites by using commonly used Internet statistics (e.g., successful requests, frequency of use, etc.).** Motor vehicle manufacturers shall submit such reports annually **within 30 days of the end of the calendar year by December 31st.** The Executive Officer may also require motor vehicle manufacturers to submit additional reports upon request, including any information required by the United States Environmental Protection Agency under the ~~F~~federal S~~s~~ervice I~~information R~~ule regulation. These reports shall be submitted in a format prescribed by the Executive Officer.

- (f) Diagnostic and Reprogramming Tools and Information.
- (1) Diagnostic and Reprogramming Tools.
- ~~(A) Except as provided in (B) below, all Mmotor vehicle manufacturers of passenger cars, light-duty trucks, and medium-duty vehicles shall make available for purchase through reasonable business means, including ordering over the Internet, to all covered persons, all emissions-related enhanced diagnostic tools, and reprogramming tools available to franchised dealers or authorized service networks, including software and data files used in such equipment. The motor vehicle manufacturer shall ship purchased tools to a requesting covered person as expeditiously as possible after a request has been made.~~
- ~~(B) As a condition of purchase, heavy-duty engine and transmission manufacturers may require covered persons to participate in training courses related to the proper use of their enhanced diagnostic tools before making them available for purchase. The training must be made available at a fair, reasonable, and nondiscriminatory prices.~~
- (2) Data Stream and Bi-Directional Control Information.
- ~~(A) Except as provided in (B) below, all MmMotor 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 and 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 and authorized service network tools. Heavy-duty engine and transmission manufacturers are exempt from these requirement as they apply to enhanced data stream information and bi-directional control information.~~ The motor vehicle manufacturer shall make such 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 to the requesting company. 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:
- ~~(A i A)~~ If the evidence demonstrates that the motor vehicle manufacturer has a reasonably-based belief that the

requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be granted.

~~(B ii B)~~ If the evidence does not demonstrate that the motor vehicle manufacturer has a reasonably-based belief that the requesting equipment and tool company could not produce safe and functionally accurate tools, the petition will be denied and the motor vehicle manufacturer shall make the requested information available to the requesting equipment and tool company within 2 days of the denial.

~~(B) As a condition of purchase of the manufacturer's enhanced diagnostic data stream and bi-directional control information, heavy-duty engine and transmission manufacturers may require that an equipment and tool company purchasing such information provide mandatory training courses to ultimate purchasers of the equipment and tools made available for sale using the purchased data stream and bi-directional control information. If required, such training shall include instruction on the proper operation of the equipment and tool as it applies the engine or transmission in question.~~

(3) Reprogramming Information.

(A) Beginning with the 2004 model year, ~~motor vehicle manufacturers'~~ reprogramming methods used for passenger cars, light-duty trucks, and medium-duty vehicles shall be compatible with SAE J2534 Paper, "Recommended Practice for Pass-Thru Vehicle Programming, February 2002 ~~December 2003~~ September 2004, which is incorporated by reference herein, for all vehicle models that can be reprogrammed by franchised dealerships ~~or and~~ authorized service networks. ~~Heavy-duty engine and transmission manufacturers may alternatively standardize its reprogramming methods to the Technology and Maintenance Council's Recommended Practice RP1210a, "Windows™ Communication API," July 1999, incorporated by reference herein.~~

(B) ~~Motor vehicle m~~Manufacturers of passenger cars, light-duty trucks and medium-duty vehicles shall make available for purchase through reasonable business means to covered persons for vehicle models meeting the requirements of subsection (f)(3)(A) all vehicle reprogramming information and materials necessary to install motor vehicle manufacturers' software and calibration data to the extent that it is provided to franchised dealerships ~~or authorized service networks~~. The motor vehicle manufacturer shall, within 2 days of receipt of a covered person's request, provide purchased reprogramming

information via an Internet download or, if available in a different electronic format, via postal mail or package delivery service.

- (4) The information and tools required by this subsection shall be made available for purchase ~~no later than 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 these dates. For all new vehicle models for which production commences after the above dates, motor vehicle manufacturers shall make available for purchase the required information no later than 180 days after the start of~~ **engine or** vehicle introduction into commerce or concurrently with its availability to franchised dealerships **or and** authorized service networks, whichever occurs first.
- (g) Costs: All information and diagnostic and reprogramming tools required to be provided to covered persons by these regulations shall be made available for purchase at a fair, reasonable, and nondiscriminatory prices.
- (h) Motor vehicle manufacturers shall not utilize any access code, recognition code or encryption for the purpose of preventing a vehicle owner from using an emission-related motor vehicle part (with the exception of the powertrain control module, engine control modules and transmission control modules), that has not been manufactured by that motor vehicle manufacturer or any of its original equipment suppliers.
- (i) Trade Secrets: Motor vehicle manufacturers may withhold trade secret information (as defined in the Uniform Trade Secret Act contained in Title 5 of the California Civil Code) which otherwise must be made available for purchase, subject to the following:
- (1) At the time of initial posting of all information required to be provided under sections (d) through (f) above, the motor vehicle manufacturer shall identify, by brief description, any information that it believes to be a trade secret and not subject to disclosure.
  - (2) A covered person, believing that a motor vehicle manufacturer has not fully provided all information that is required to be provided under subsections (d) through (f) above shall submit a request in writing by certified mail to the motor vehicle manufacturer for release of the information.
  - (3) Upon receipt of the request for information, a motor vehicle manufacturer shall do the following:
    - (A) If it had not previously made the information available for purchase because of an oversight, it shall make the information available within 2 days from receipt of the request directly to the requesting covered person at a fair, reasonable, and nondiscriminatory price and by reasonable business means. Additionally, the motor vehicle manufacturer shall, within 7 days,

- make such information available for purchase to other covered persons consistent with the requirements of these regulations.
- (B) If it has not made the requested information available for purchase because it believes the information to be a trade secret, it shall within 14 days, notify the requesting covered person that it considers the information to be a trade secret, provide justification in support of its position, and make reasonable efforts to see if the matter can be resolved informally.
  - (C) If during this 14 day period set forth in paragraph (B), the motor vehicle manufacturer determines that the information is, in fact, not a trade secret, it shall immediately notify the requesting covered person of its determination and make the information available within the timeframes and means set forth in paragraph (A)
  - (D) If the parties can informally resolve the matter, the motor vehicle manufacturer shall within 2 days provide the requesting covered person with all of the information that is subject to disclosure consistent with that agreement. The motor vehicle manufacturer shall also, within 7 days, make such information available for purchase to other covered persons consistent with the requirements of these regulations.
  - (E) If the matter cannot be informally resolved, the motor vehicle manufacturer shall, within ~~21~~ 30 days from the date that it initially received the request for information, **or such longer period the parties may mutually agree upon**, petition the California superior court for declaratory relief to make a finding that the information is exempt from disclosure because it is a trade secret. The petition shall be filed in accordance with the California Code of Civil Procedure section 395 et seq. The petition shall be accompanied with a declaration stating facts that show that the motor vehicle manufacturer has made a reasonable and good faith attempt to informally resolve the matter.
- (j) Executive Officer Review of Compliance.
- (1) The Executive Officer shall monitor compliance with the requirements of Health and Safety Code section 43105.5 and this regulation.
  - (2) The Executive Officer, through the Chief of the Mobile Source Operations Division (Division Chief), shall periodically audit a motor vehicle manufacturer's Internet website(s) and other distribution sources to determine whether the information requirements of Health and Safety Code section 43105.5 and this regulation are being fulfilled. Motor vehicle manufacturers must provide the Executive Officer with free unrestricted access to the sites and other sources for the purposes of an audit.

- (3) The Division Chief shall also commence an audit upon receipt of a request from a covered person that provides reasonable cause to believe that a motor vehicle manufacturer is not in compliance.
  - (A) Such a request shall be in the form of a written declaration setting forth specific details of the alleged noncompliance of the motor vehicle manufacturer. The declaration shall also set forth facts that demonstrate that the requesting covered has undertaken efforts to resolve the matter informally with the named motor vehicle manufacturer.
  - (B) The covered person shall concurrently serve a copy of the audit request on the motor vehicle manufacturer against whom the request has been filed.
  - (C) The Division Chief shall determine if the request, on its face, sets forth facts establishing reasonable cause to believe that that motor vehicle manufacturer is in noncompliance with Health and Safety Code section 43105.5 or these regulations and that the covered person has undertaken reasonable efforts to informally resolve the alleged noncompliance with the motor vehicle manufacturer directly. If the Division Chief determines that the request satisfies these conditions, he or she shall conduct an audit of the designated motor vehicle manufacturer's site. Otherwise, the Division Chief shall dismiss the request and notify the requesting covered person and the affected motor vehicle manufacturer of his or her determination.
- (4) In conducting any audit, the Division Chief may require the motor vehicle manufacturer to provide the ARB with all information and materials related to compliance with the requirements of Health and Safety Code section 43105.5 and this regulation, including but not limited to:
  - (A) Copies of all books, records, correspondence or documents in its possession or under its control that the motor vehicle manufacturer is required to provide to persons engaged in the service and repair industries and to equipment and tool companies under paragraphs (c) through (f) of this regulation, and
  - (B) Any and all reports or records developed or compiled either for or by the motor vehicle manufacturer to monitor performance of its Internet site(s).
- (5) In conducting the audit, the Division Chief may order or subpoena the motor vehicle manufacturer, the party filing the request for inspection, or any other person with possible knowledge of the issue of noncompliance to appear in person and testify under oath. The Division Chief may also request or subpoena such persons to provide any additional information that the Division Chief deems necessary to determine any issue of noncompliance.



- (6) Except for good cause, the audit shall be completed within 60 days from the date that the Division Chief notifies the motor vehicle manufacturer about the audit. At the conclusion of the audit, the Division Chief shall issue a written determination, with supporting findings, regarding compliance by the motor vehicle manufacturer.
- (7) If the Division Chief finds sufficient credible evidence that the motor vehicle manufacturer is not in compliance with any requirements of Health and Safety Code section 43105.5 or this regulation, the determination shall be in the form of a notice to comply against the motor vehicle manufacturer.
- (8) The Division Chief's determination not to issue a notice to comply against a motor vehicle is subject to limited review by the Executive Officer.
  - (A) A covered person may only request that the Executive Officer review a determination that it specifically requested pursuant to paragraph (3) above.
  - (B) The covered person shall file the request for Executive Officer review within 10 days from the date of issuance of the Division Chief's determination.
    - (i) The request shall be filed to the attention of the Executive Officer c/o Clerk of the Board, Air Resources Board, P.O. Box 2815, Sacramento, CA 95812-2815. A copy of the request shall be concurrently served on the motor vehicle manufacturer that was the subject of the audit and determination.
    - (ii) The request shall set forth specific facts and reasons why the determination should be reviewed and supporting legal authority for why a notice to comply should have been issued.
  - (C) The motor vehicle manufacturer may file an opposition to the request for review within 10 days from the date of service of the request for review.
  - (D) The Executive Officer shall issue a determination within 30 days from the last day that the motor vehicle manufacturer had to file an opposition. The Executive Officer may affirm the decision of the Division Chief; remand the matter back to the Division Chief for further consideration or evidence; or issue a notice to comply against the motor vehicle manufacturer.
- (9) Within 30 days from the date of issuance of a notice to comply, the motor vehicle manufacturer shall either:
  - (A) Submit to the Executive Officer a compliance plan that adequately demonstrates that the motor vehicle manufacturer will come into compliance with this section within 45 days from the date of submission of the plan, or such longer period that the Executive

- Officer deems appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance; or
- (B) Request an administrative hearing to consider the basis or scope of the notice to comply.
- (10) If the motor vehicle manufacturer elects to submit a compliance plan, the Executive Officer shall review the plan and issue a written determination, within 30 days, either accepting or rejecting the plan. The Executive Officer shall reject the compliance plan if the Executive Officer finds that it will not bring the motor vehicle manufacturer into compliance within 45 days from the date that the plan would have been approved, or such longer period that the Executive Officer deemed appropriate to allow the motor vehicle manufacturer to properly remedy the noncompliance. The Executive Officer shall notify the motor vehicle manufacturer in writing of his or her determination, and that the Executive Officer will be seeking administrative review pursuant to subsection (k) below.
- (11) After approving a proposed compliance plan, if the Executive Officer determines that the motor vehicle manufacturer has failed to comply with the terms of the plan, the Executive Officer shall notify the motor vehicle manufacturer of his or her determination and that he or she will be seeking administrative review pursuant to subsection (k) below.
- (k) Administrative Hearing Review.
- (1) A motor vehicle manufacturer may request that a hearing officer review the basis and scope of the notice to comply. Failure by the motor vehicle manufacturer to request such a review and failing, in the alternative, to submit a compliance plan as required by paragraph (j)(8)(A) shall result in the Executive Officer's determination becoming final and may subject the motor vehicle manufacturer to penalties pursuant to Health and Safety Code section 43105.5(f) and paragraph (l).
- (2) The Executive Officer shall forward the following matters to a hearing officer for appropriate administrative review, including, if warranted, consideration of penalties:
- (A) A compliance plan that it has rejected pursuant to paragraph (j)(9).
- (B) A notice to comply that has been issued against a motor vehicle manufacturer who has failed to either request administrative review of the Executive Officer determination, or, in the alternative, to submit a compliance plan.
- (C) An Executive Officer determination that a motor vehicle manufacturer has failed to satisfy the terms of a compliance plan it has submitted in response to a notice to comply.

- (3) Administrative hearings under this regulation shall be conducted pursuant to the procedures set forth in title 17, California Code of Regulations, section 60060 et seq.
- (l) Penalties.
- (1) If after an administrative hearing, the hearing officer finds that the motor vehicle manufacturer has failed to comply with any of the requirements of this section, and the motor vehicle manufacturer fails to correct the violation within 30 days from the date of his finding, the hearing officer may impose a civil penalty upon the motor vehicle manufacturer in an amount not to exceed \$25,000 per day (including Saturdays, Sundays, and observed holidays) per violation until the violation is corrected. The hearing officer may immediately impose a civil penalty in cases where a motor vehicle manufacturer has failed to act in accordance with a compliance plan it has previously submitted.
  - (2) For purposes of this section, a finding by a hearing officer that a motor vehicle manufacturer has failed to comply with the requirements of Health and Safety Code section 43105.5 and title 13, CCR, section 1969 et seq., including the failure to submit a timely compliance plan, shall be considered a single violation.

NOTE: Authority cited: sections 39600, 39601, 43000.5, 43018, ~~and~~ 43105.5, and 43700, Health and Safety Code. Reference: section 39027.3, 43104 and 43105.5, Health and Safety Code