State of California
AIR RESOURCES BOARD

STAFF REPORT: INITIAL STATEMENT OF REASONS
FOR PROPOSED RULEMAKING

PUBLIC HEARING TO CONSIDER ADOPTION OF CALIFORNIA REGULATIONS FOR MOTOR VEHICLE SERVICE INFORMATION

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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…….A

Attachment B – Proposed California Regulations to Title 17, California Code of Regulations, Chapter 1, Subchapter 1.25, Article 2.5 Administrative Procedures for Review of Executive Officer Determinations Regarding Service Information for 1994 and Subsequent Model Year Vehicles……..B

EXECUTIVE SUMMARY

The Air Resources Board (ARB) staff is proposing regulations to require the availability of emission-related service information for 1994 and later passenger cars, light-duty trucks, and medium-duty vehicles. This proposal is being developed pursuant to the requirements of Senate Bill 1146 (SB1146), which created Health and Safety Code Section 43105.5. Enacted on September 30, 2000, the statute requires the ARB to adopt such regulations by January 1, 2002.

Both the ARB and the United States Environmental Protection Agency (U.S. EPA) have recognized the importance of such service information since the inception of on-board diagnostic (OBD) systems in motor vehicles. OBD systems alert vehicle operators when emission-related malfunctions occur, and provide service technicians with information regarding the nature of the problem. Complete service information is then needed to enable technicians to repair the identified problems. Historically, independent service providers have not always been able to obtain the same level of information that is available to the service centers of franchised dealerships.

Requirements for access to service information are currently in place under federal regulations. Independent service providers may order information available to dealers directly from manufacturers' clearinghouses. The information available is listed in an online database within FedWorld. The U.S. EPA is currently considering amendments to these requirements that would, among other things, also call for direct access to required service information over the Internet in order to facilitate faster and more convenient access to emission-related service information. Throughout the development of these proposals, the ARB staff has been in contact with U.S. EPA staff in order to harmonize the respective regulations.

In order to meet the requirements of the bill, staff proposes that motor vehicle manufacturers provide all emission-related service information, including service manuals, technical service bulletins, and training materials, over the Internet. In general, the proposal requires motor vehicle manufacturers to provide the same level of information that is available to franchised dealerships. If it is not already available, the regulation would require manufacturers to develop and make available descriptions of the basic design and operation of vehicle On-Board Diagnostic II (OBD II) systems.

The proposed regulation would also require vehicle manufacturers to offer for sale the emission-related diagnostic tools that are used by dealership technicians, along with information necessary for the same diagnostic capabilities to be designed into aftermarket tools that are not manufacturer specific. Similarly, equipment necessary to install updated on-board computer software must be made available to aftermarket service providers. Included in the regulation is a requirement for manufacturers to provide information relative to initializing on-board computers with integrated vehicle theft deterrents, if such information is necessary for installation of the computer or the repair and replacement of other emission-related parts. The

staff's proposal contains provisions for the protection of trade secret information that would otherwise have to be disclosed under the regulation. The proposed regulation would also set forth procedures for determining whether manufacturers are in compliance once the requirements take effect.

Under the proposal, initial non-compliance determinations would be made by the Executive Officer and would be communicated to the affected vehicle manufacturer. The manufacturer would then have the option of submitting a compliance plan to remedy the non-compliance, or to request an administrative review of the Executive Officer's determinations. 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 do not correct issues of noncompliance.

The staff estimates that the primary costs of compliance with this regulatory action will be the transfer of data to manufacturer websites and the maintenance of such websites. Based on information from motor vehicle manufacturers, it is expected that start-up costs for the development of a compliant website would range from $600,000 to $5 million, while annual maintenance costs would be in the vicinity of $150,000 to $450,000. Manufacturers are permitted by the regulation to set fair, reasonable, and non-discriminatory prices for the tools and information that must be made available under the regulation, thereby offsetting some or all of the compliance costs.

State of California
AIR RESOURCES BOARD

Staff Report: Initial Statement of Reasons for Proposed Rulemaking

PUBLIC HEARING TO CONSIDER ADOPTION OF CALIFORNIA REGULATIONS FOR MOTOR VEHICLE SERVICE INFORMATION

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I. Introduction

Existing state and federal laws require motor vehicle manufacturers to provide emission-related service information to facilities and technicians that are not affiliated with franchised dealerships. The purpose of these rules is to better ensure that all segments of the automotive repair industry have the information and tools necessary to repair emission-related malfunctions, thereby reducing emissions from these vehicles over their lifetimes. Senate Bill 1146 was enacted in September 2000 to expand the scope of information that must be made available to independent service facilities, and to improve the ease with which the information can be accessed. Furthermore, the bill provides for information to be made available to aftermarket parts manufacturers in order to ensure that their products are compatible with current technology vehicles. It added Health and Safety Code Section 43105.5, which directs the ARB to adopt these regulations no later than January 1, 2002. The regulatory action proposed by the ARB staff would fully implement the requirements of the statute, while creating consistency with similar regulations currently under consideration by the U.S. EPA.

II. Background

Motor vehicles of today are more complex than ever. The adoption of increasingly stringent emission standards has resulted in advanced emission control systems such as three-way catalytic converters, precise closed-loop fueling strategies, exhaust gas recirculation, and enhanced evaporative emission controls. With these components and systems, new cars and trucks sold today are up to 96 percent cleaner than those sold 10 years ago.[1] However, continued performance at 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. Since the 1994 model

[1] Based on a comparison of Tier 1 and Super Ultra-Low Vehicle (SULEV) emission standards.

year, the ARB has relied on second generation on-board diagnostic systems, known as OBD II systems, to provide for quick detection and repair of emission-related problems.

OBD II systems are incorporated into vehicle on-board computers to monitor the performance of virtually every component and system that can affect emissions. The OBD II system alerts the vehicle operator of the occurrence of a malfunction, and stores diagnostic information in the on-board computer for later retrieval and use by a service technician. Through the rapid identification and repair of 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 service technicians have access to the information and diagnostic tools necessary to effectively utilize OBD II system information, and to carry out necessary repair work for identified problems. This is especially true for independent service providers who have been estimated to perform up to 80 percent of all automotive repairs.[2] The availability of compatible 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 postponed or done improperly.

In response to concerns from the aftermarket service providers and parts makers regarding the availability of emission-related service information and diagnostic tools, Governor Gray Davis signed Senate Bill (SB) 1146 into law on September 30, 2000. The intent of the bill is to aid independent service providers in the repair of emission-related malfunctions by ensuring that adequate information and diagnostic tools are available for use. The bill addresses service information availability in three specific areas:

1. Motor vehicle manufacturers would be required to make available all emission-related diagnostic and service literature (e.g., service manuals, technical service bulletins, and training materials) in an easily accessible format at fair, reasonable, and nondiscriminatory costs. Access to this information on the Internet is specifically required.

2. Motor vehicle manufacturers must make available to the aftermarket the same diagnostic tools that are available to franchised dealerships. Further, specific information that can be used to design and market more affordable service and reprogramming equipment must be provided. If special tools or information are necessary for the installation of on-board computers into vehicles that employ integral vehicle theft deterrent systems, such materials must be made available to the aftermarket.

3. Motor vehicle manufacturers must make available basic OBD II system design information to help service technicians understand OBD II system operation, and better ensure that aftermarket parts manufacturers will be able to produce

[2] Federal Register: August 9, 1995 (Volume 60, Number 135), pg. 40475.

emission-related parts that are OBD II compatible and effective in controlling emissions.

Requirements for access to service information are currently in place under federal regulations. Independent service providers may order information directly from manufacturers' clearinghouses[3]. The information available is listed in an online database within FedWorld. The U.S. EPA has recently initiated a proposed rulemaking to make adjustments to these requirements based on experience gained since the regulation was first promulgated in 1995. These amendments would, among other things, also require manufacturers to make service information directly accessible over the Internet in order to improve the speed and convenience of obtaining the information. To promote consistency, the ARB staff and the U.S. EPA have worked to harmonize the respective regulations wherever possible. The staff believes this effort will eliminate any need for the manufacturers to take separate actions to meet each set of requirements.

III. Summary of Proposal

A. Applicability of the Regulation

In accordance with SB1146, the staff is proposing that the service information requirements of section 1969 of Title 13, California Code of Regulations (Title 13 CCR section 1969), apply to all 1994 and later model year passenger cars, light-duty trucks, and medium-duty vehicles certified to California's OBD II requirements.[4] OBD II system descriptions would need to be provided only for 1996 and later model year vehicles, consistent with SB1146, in order to reduce the manufacturers' burden of creating OBD II description information in cases where it does not currently exist. The regulation will replace the existing service information requirements in section 1968.1(k)(2.1) of the OBD II regulation when Title 13 CCR section 1969 is effective and operative.

B. Service Information

The bulk of emission-related service information needed by independent service facilities and aftermarket part manufacturers consists of text-based data that are routinely used to complete service and repairs on consumer vehicles. Such information includes, but is not limited to, service manuals, technical service bulletins, troubleshooting manuals, and training materials. The staff's proposal would require manufacturers to make available all emission-related service information that is available to franchised dealerships.

C. Access to Service Information

Under the staff's proposal the required information would be offered for sale to "covered persons". A covered person is defined as any person or entity engaged

[3] Code of Federal Regulations, Part 86, Section 86.094-38.
[4] Title 13, California Code of Regulations, Section 1968.1.

in the business of service or repair of motor vehicles in California, or who is engaged in the manufacture or remanufacture of emission-related motor vehicle parts for those California motor vehicles. The original definition of covered person provided in SB1146 only extended to licensed or registered service facilities, a condition that would effectively exclude companies that service and repaire their own vehicle fleets (e.g., utility and mail companies). Staff does not believe the intent of the bill was to do so and thus, removed this qualifying language. Motor vehicle manufacturers would need to ensure that the information is standardized to conform with the terms and acronyms specified in Society of Automobile Engineers (SAE) Recommended Practice J1930. The use of standardized terms and acronyms will allow technicians to effectively make use of manufacturers' service information without having to become familiar with multiple, and possibly conflicting, terms and acronyms for emission-related parts.

The Legislature specifically directed in Health and Safety Code section 43105.5(a)(1) that service information, at a minimum, be made available via the Internet. To ensure proper access and availability of requested information on the Internet, the regulation would require manufacturer websites to meet minimum performance requirements. The proposed requirements would help to prevent situations where information cannot be obtained because of unreasonably long webpage download times caused by a lack of Internet bandwidth, inadequately designed search engines, complicated subpage structures, etc. Additionally, to this end, the staff is proposing that all documents be accessible using commonly available software for website browsing and document viewing, and updates to the websites should occur at the same time that such new information is made available to franchised dealerships. To assess the performance of manufacturer websites in effectively providing the information required by the regulation, manufacturers would be required to submit annual reports to the Executive Officer regarding compliance with the aforementioned requirements. The Executive Officer would also have free, unrestricted access to all manufacturer websites to monitor manufacturer compliance with the regulation.[5]

Various levels of access (e.g., one-time versus long-term use) must be considered by motor vehicle manufacturers so that users are not limited by inflexible pricing and registration structures. Motor vehicle manufacturers would also need to respond to any electronic mail inquires within 48 hours, Monday through Saturday (excluding California holidays). The staff has proposed this requirement to provide service information users with an avenue to resolve issues related to the availability of specific information, or questions related to the content of posted information. It is expected that manufacturers will take necessary action to fully resolve e-mail inquiries within that time period. However, the staff realizes that the 48 hour response time could on occasion be exceeded due to the nature of the request or other complicating circumstances. In such cases, the staff would expect the

[5] ARB staff is responsible under SB1146 for auditing manufacturers' compliance with the regulation for the purposes of identifying and correcting issues of non-compliance. Further, the ARB is responsible for reporting yearly to the legislature on the effectiveness of the regulation that is adopted towards fulfilling the goals of Health and Safety Code Section 43105.5.

manufacturer to clearly communicate to the requestor the status of its inquiry within 48 hours.

The staff proposes that all required service information remain available on the Internet for a minimum of fifteen years. After such time, a motor vehicle manufacturer could choose to leave the service information on its website or make it available for purchase in an off-line electronic format, such as CD-ROM. The option of archiving the information is proposed so that manufacturers will not have to continuously expand website capacity to include new models while retaining all existing information. The staff believes that after 15 years, the demand for service information for a particular model will be low due to vehicle attrition, and because most technicians would likely already own the information they need. Notwithstanding, the information would still be available for purchase in an off-line format for any covered person that needs it.

A small-volume exemption to the requirement to access information over the Internet is proposed for motor vehicle manufacturers that produce less than 300 motor vehicles annually in California (based on average sales of the three previous model years). For the purposes of determining a small-volume manufacturer in this case, the sales volume for a motor vehicle manufacturer would be based on sales of vehicle models for which the manufacturer is the manufacturer-of-record irrespective of whether that company is wholly or partially owned by another company. Under this small-volume provision, such manufacturers would have the option to instead provide the required information in another viable format, subject to Executive Officer approval. At a minimum though, a basic website would have to be established that describes how the desired information can be obtained by other reasonable business means. The inclusion of a small-volume allowance takes into consideration the magnification of the costs (discussed later in this report) involved in creating user-friendly Internet websites for very few vehicle models. Small-volume manufacturers have stated that they have insufficient technology resources and capital to convert service information to an on-line format.[6] Since it is anticipated that demand for service information from such manufacturers will be quite low, staff does not believe that it would be cost-effective to require these manufacturers to develop and maintain comprehensive websites on a continual basis.

D. On-Board Diagnostic System Descriptions

SB1146 requires manufacturers to make available general descriptions of the design and operation of on-board diagnostic systems for 1996 and subsequent model year vehicles. These descriptions include the system's monitored parameters, diagnostic trouble codes, enabling conditions, monitoring sequence, and malfunction thresholds. This information will help service technicians to better understand the circumstances under which malfunctions are detected, and also will provide manufacturers of emission-related replacement parts with information that can be used to better ensure that replacement parts are compatible with OBD II systems. The regulation would not otherwise require motor vehicle manufacturers to

[6] April 17, 2001, letter from Volkswagen of America on behalf of Rolls Royce & Bentley Motor Cars.

provide information specifically for use in the design and manufacture of replacement parts.

As part of the OBD II description, the regulations would require motor vehicle manufacturers to provide identification and scaling information necessary to understand and interpret data accessible to generic scan tools under mode 6 of SAE J1979, consistent with a similar provision in the OBD II regulation.[7] As directed by SB1146, the regulations do not require motor vehicle manufacturers to include specific trade secret algorithms, software codes, and calibration data into the system descriptions. The staff expects that manufacturers should be able to organize and format OBD II descriptions in such a manner that the requirements of the regulations could be met without compromising trade secret information. If this cannot be accomplished, the vehicle manufacturer could seek judicial relief from providing the confidential information in question, as discussed in section III(I) below.

E. Diagnostic Tools and Reprogramming Equipment

Pursuant to SB1146, the proposed regulation would require manufacturers to offer for sale the emission-related diagnostic tools that are provided to franchised dealerships. The proposal would ensure the availability of dealership-quality tools to the aftermarket and provide for improved diagnoses and repair of emission-related malfunctions. If a manufacturer's tool includes both emission-related and non emission-related information and diagnostic capabilities, the manufacturer can elect to produce and make available to the aftermarket an emission-related only version of the diagnostic tool. In such a case, the tool provided to the aftermarket must be able to perform all emission-related diagnostic routines in a manner equivalent to the multitask tool supplied to the dealership.

In addition to offering for sale diagnostic tools that are provided to dealerships, the regulation would require motor vehicle manufacturers to make available emission-related enhanced data stream information[8] and bidirectional commands[9] to aftermarket tool manufacturers. This proposal is specifically required by Health and Safety Code, section 43105.5(a)(2) and would allow the aftermarket tool manufacturers to incorporate similar functionality into their own tools.

The staff believes that providing such information should enable automotive diagnostic tool manufacturers to build tools capable of working with multiple motor vehicle manufacturer lines. In such an event, independent service technicians would be provided with potentially less expensive alternatives to manufacturer specific enhanced diagnostic tools, which typically cost several thousand dollars each.

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[7] Title 13, California Code of Regulations, Section 1968.1(k)(2.0).

[8] "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.

[9] "Bidirectional controls" typically consist 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.

Many motor vehicle manufacturers already provide data stream information and bidirectional commands as a means of satisfying the service information requirements of the OBD II regulation (Title 13, California Code of Regulations (CCR), section 1968.1(k)(2.1)). Manufacturers could elect to provide the required information to clearinghouses such as the Equipment and Tool Institute, provided the requirements for ready access to the information at a fair, reasonable, and non-discriminatory price are met

To meet SB1146's directives that on-board computer reprogramming information be provided to covered persons, the staff is proposing that manufacturer's be required to use a standardized programming interface specified by SAE J2534, "Recommended Practice for Microsoft Windows 32-Bit Application Programming Interface for Pass-Through Vehicle Reprogramming." Use of this recommended practice by motor vehicle manufacturers would allow independent service providers to program vehicles to factory specifications using commonly available personal computer based tools. Since this standard is not yet finalized by SAE, the staff is proposing that vehicle reprogramming be compatible with SAE J2534 for 2004 and later model year vehicles. For OBD II equipped vehicles produced prior to the 2004 model year, the regulation would require manufacturers to offer for sale the reprogramming equipment available to dealership technicians for the installation of manufacturer issued on-board computer software updates.

F. Immobilizer Information

Pursuant to Health and Safety Code section 43105.5(a)(6), the staff is proposing that manufacturers under specified circumstances be required to provide to the aftermarket initialization procedures used by dealerships for vehicles equipped with integrated anti-theft systems. These systems are typically referred to as "immobilizers". A manufacturer would be required to provide such procedures when necessary for installation of on-board computers, or repair or replacement of other emission-related parts. A provision to permit lead time for full compliance with this requirement, through the 2004 model year, is proposed in cases where the manufacturer would need additional time to make design changes to the immobilizer system in order to ensure that disclosure of the procedures would not compromise vehicle security. A more detailed discussion of the staff's proposals and rationale relative to immobilizers is provided below in section IV(A)(3) of this report.

G. Cost of Service Information and Diagnostic Tools

The regulation would require that all covered information and diagnostic tools be offered for sale at a "fair, reasonable, and nondiscriminatory price." The intent of the SB1146 is to stimulate competition between franchised dealerships and the aftermarket by ensuring that the aftermarket has equal access to service information and tools necessary for the proper service and repair of vehicles and the manufacturing of replacement parts. To this end, the statute requires that manufacturers be compensated at a price that is fair and reasonable to all interested parties, and that the price should not advantage franchised dealers over the

aftermarket industry. The proposed regulation does not specify actual prices or price caps for service information and tools. Rather, ARB staff's proposed regulatory approach is to define a number of factors that will permit manufacturers to recover costs associated with providing required information and diagnostic tools, while considering the ability of the aftermarket industry to afford the materials. Specifically, the staff is proposing that the following factors be included in evaluating whether set prices are fair, reasonable, and non-discriminatory.

- The net cost to the motor vehicle manufacturers' franchised dealerships for similar information obtained from motor vehicle manufacturers after considering any discounts, rebates or other incentive programs;
- The cost to the motor vehicle manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing, implementing, upgrading or altering the onboard computer and its software or any other vehicle component. Amortized capital costs may be included;
- The price charged by other motor vehicle manufacturers for similar information;
- The price charged by the motor vehicle manufacturer for similar information immediately prior to January 1, 2000;
- The ability of an average covered person to afford the information;
- The means by which the information is distributed;
- The extent the information is used in general and by specific users, which includes the number of users, and the frequency, duration, and volume of use; and,
- Inflation.

The ARB will consider all relevant factors in making any determination that a manufacturer's set prices are not fair, reasonable, and non-discriminatory. The ARB will conduct periodic audits of manufacturer pricing policies. A finding that a manufacturer's pricing is not fair, reasonable, and nondiscriminatory would result in the Executive Officer issuing a notice to comply to the manufacturer.

H. Implementation Dates

The staff is proposing that motor vehicle manufacturers make all required information, including OBD II system general descriptions and diagnostic tools, available 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 that date. Thus the initial implementation date would be no earlier than January 1, 2003. The staff has proposed this date in order to avoid a situation where the manufacturers' compliance deadline is uncertain and based on the speed with which the post Board Hearing regulatory work is completed and approved. The fixed implementation date provides manufacturers with the ability to effectively plan the remaining work required to achieve regulatory compliance. Further, the staff believes that the January 1, 2003, implementation date provides sufficient lead time for manufacturers to carry out this work. The provision to extend the implementation

beyond January 1, 2003, to 180 days after the effective date of the regulation is proposed to provide a reasonable time period following completion of the regulatory activity during which manufacturers can reassess their compliance with the final rule and make necessary adjustments.

For vehicle models introduced into commerce after the effective date of the regulation, the information would need to be available within 180 days from the start of the vehicle model's introduction into commerce or concurrently with the availability of the information to franchised dealerships, whichever occurs first. The term "start of introduction into commerce" refers to the initial date a motor vehicle is available for sale at a manufacturer's dealership. The proposed 180 days would provide manufacturers with lead-time to publish the required information and to create a stock of materials and tools that will be offered for sale. By requiring concurrent availability of information with franchised dealerships within the 180-day period, the staff believes the proposal should not in any way disadvantage independent service providers. Further, the staff believes the need for service information outside of the dealerships within the first six months of model introduction is low. All vehicles in need of repair would be under warranty and in nearly all cases be taken to dealerships for free service.

I. Trade Secret Disclosure

SB1146 contains provisions for manufacturers to withhold trade secret information that would otherwise have to be disclosed. The staff is proposing regulatory text to guide the process of resolving trade secret disclosure issues.

The staff's proposal, consistent with the language of SB1146, will ultimately require the vehicle manufacturers to obtain trade secret protection from the California superior courts. However, in order to avoid unnecessary use of courts, the staff's proposes that manufacturers be required to seek declaratory relief only if trade secret determinations are in dispute (i.e., only if the aftermarket wants the information, and objects to a manufacturer's trade secret claims). Specifically, the staff's proposal would permit 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). At the time information for vehicle models is made available, the motor vehicle manufacturer would be required to identify on the website, by general description, the information it has withheld as trade secret. Covered persons that believe the information not to be a trade secret or believe availability of the information is necessary to "mitigate anticompetitive effects" may request the motor vehicle manufacturer in writing to make the information available. The motor vehicle manufacturer would then have 14 days in which to respond to the request, and the parties would have an additional 7 days in which to attempt to resolve the information request informally. If resolution cannot be reached within the 21-day period, the motor vehicle manufacturer would be required to petition the California superior court to obtain an exemption from disclosure.

J. Compliance Review Procedures

Under the staff's proposal, the ARB, through the Chief of the Mobile Source Operations Division, would review a motor vehicle manufacturer's compliance with these regulations. In general, the ARB would conduct periodic audits of motor vehicle manufacturer websites and information made available via the Internet or other distribution sources. In addition, a covered person may request that the ARB conduct an audit of a specific motor vehicle manufacturer. In such cases, the Division Chief would initiate an audit upon making the following findings: (1) the request, on its face, establishes reasonable cause to believe that the manufacturer is in noncompliance with the Health and Safety Code section 43105.5 and these implementing regulations, and (2) the covered person has made reasonable efforts to resolve the matter informally with the manufacturer. In conducting audits, the Division Chief would review all pertinent information provided by the covered person and manufacturer and could subpoena any additional information and testimony that he or she believes would be pertinent to the inquiry. At the conclusion of the audit, the Division Chief would issue a written determination as to whether the motor vehicle manufacturer is in compliance with the statute and regulations.

If the Division Chief, after reviewing all of the evidence, finds that the motor vehicle manufacturer is not in compliance with the governing statute or regulation, he or she would issue a notice to comply to the motor vehicle manufacturer ordering it to remedy the non-compliance. If, on the other hand, the Division Chief determines that the motor vehicle manufacturer is in compliance, the ARB would pursue no further action. In such a case, the covered person, who filed the request for the audit, could request that the Division Chief's determination be reviewed by the Executive Officer. Upon review, the Executive Officer could 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 manufacturer. If the Executive Officer affirms the determination of the Division Chief, the covered person could petition the superior court for a writ of mandamus pursuant to California Civil Procedure section 1085.

As directed by SB 1146, upon being issued a notice to comply, the motor vehicle manufacturer would be required to either submit within 30 days a compliance plan for Executive Officer approval, or request an administrative hearing to contest the basis or scope of the notice. See section K. below. The Executive Officer would review any compliance plan that is submitted and accept those plans that demonstrate compliance within 45 days from the date of submission of the plan, or such longer term that the Executive Officer finds is necessary. If the plan is rejected by the Executive Officer, the Executive Officer would be required, as directed by SB1146, to seek review of its determination by an administrative hearing officer as discussed in section III(K) below.

The staff has proposed the foregoing audit and review procedures believing that it will enable the ARB to better monitor compliance by ensuring that its limited enforcement resources are utilized efficiently while concurrently providing covered persons with fair and reasonable access to the Board's enforcement process. The

proposed procedures preserve the Executive Officer's discretion in enforcing the regulations and policies of the agency, a decision clearly within the Executive Officer's expertise. At the same time the review procedures assure covered persons who believe that a manufacturer may not be complying with the law the opportunity to present their case to the agency and to have an adverse determination reviewed.

K. Administrative Hearing Procedures

Health and Safety Code section 43105.5(f) provides that the ARB shall establish an administrative hearing procedure for the review of Executive Officer determinations of non-compliance against manufacturers regarding the provisions of SB1146 and the implementing regulations. To that end, the ARB is proposing in section 1969(k)(1) that a motor vehicle manufacturer may request administrative hearing review of an ARB determination to issue a notice to comply against the manufacturer. To assure proper enforcement of the statute and implementing regulations, section 1969(k)(2) would require the Executive Officer to forward specific matters regarding a motor vehicle manufacturer's noncompliance to a hearing officer for administrative review. SB1146 requires that an independent hearing officer review any Executive Officer determination rejecting a manufacturer compliance plan. The statute further provides that the hearing officer be entrusted to impose administrative penalties against a manufacturer for continued noncompliance. Accordingly, the proposed regulations would require the Executive Officer to have determinations regarding a manufacturer's noncompliance reviewed and enforced by the independent hearing officer through issuance of compliance orders and possible assessment of penalties.

Staff is proposing the adoption of detailed hearing procedures to accomplish this objective. The procedures would be codified at Title 17, California Code of Regulations section 60060.1 through 60060.34. The proposed procedures would provide the parties with notice and the opportunity to have Executive Officer determinations regarding a motor vehicle manufacturer's compliance with Health and Safety Code section 43105.5 and the implementing regulations, Title 13, CCR, section 1969, reviewed in a full, fair, and expeditious manner. A neutral administrative hearing officer would preside over such hearings. The proposed procedures substantially parallel other procedures for administrative hearings that have been adopted by the ARB (see Title 17, CCR, Division 3, Chapter 1, Subchapter 1.25) and are in accord with the California Administrative Procedures Act, Government Code section 11400 et seq.

Consistent with the provisions of SB1146 and proposed sections 1969(j) and (k), Title 13, CCR, covered persons would not have the right to request an administrative hearing to review an Executive Officers determination not to issue a notice to comply against a motor vehicle manufacturer. See discussion in section III(J) above. But, under the proposed hearing procedures, covered persons would be considered an interested party with the full right to intervene and participate in matters reviewed by the hearing officer.

To ensure that parties have an opportunity to properly prepare and evaluate cases for hearing, the procedures would afford all parties the right to limited discovery. The parties would be entitled to obtain the names and addresses of persons having personal knowledge of the issues under review, and to inspect and make copies of non-privileged documents that are relevant to the issues for hearing and in the possession, custody, or control of another party to the proceeding. The hearing officer would have authority to consider requests for broader discovery and motions to compel discovery.

Specific procedures are being proposed for conducting hearings. Hearings would be recorded electronically or by a court reporter. Except in the case in which a motor vehicle manufacturer has neither requested review of an issued notice to comply nor submitted a compliance plan in response to the notice, the Executive Officer would have the initial burden of presenting evidence.[10] The motor vehicle manufacturer would then have the right to examine, respond to, or rebut any contentions raised by Executive Officer, and may offer any documents, testimony, or other evidence that bears on relevant issues. At the close of the motor vehicle manufacturer's presentation, the parties would be able to present any rebuttal evidence that is necessary to resolve disputed issues. The parties would be provided a full opportunity to introduce all relevant evidence by calling and examining witnesses, cross-examination, introduction of exhibits, etc.

Under the proposed procedures, the hearing officer would govern the conduct of the hearing, make decisions on the admissibility of evidence and take whatever actions are necessary for a full and fair adjudication of the matter. Under his or her authority, the hearing officer would be able to limit the number of witnesses and the introduction of irrelevant, immaterial, unduly repetitious or unreliable evidence. In the interest of securing a complete record, the hearing officer would be authorized, in his or her discretion, to call and examine witnesses on his or her own motion; and admit any relevant and material evidence into the record.

After considering the record and submitted arguments by the parties, the hearing officer would issue a written decision and order within 30 days. The written decision would be required to set forth findings of fact, supported by the record, and the reasons and grounds for his or her decision. The hearing officer's decision would be the final decision of the ARB. The final decision, however, would be subject to judicial review by the superior court pursuant to Code of Civil Procedure section 1094.5. Likewise, the ARB would be authorized to seek enforcement of the hearing officer's final order in the superior court.

[10] A motor vehicle manufacturer that fails to request review upon being issued a notice to comply has effectively defaulted, and the hearing officer would be authorized to issue a compliance order against the manufacturer upon the proper filing by the Executive Officer of the matter for review and enforcement.

L. Non-Compliance Penalties

Pursuant to SB1146, the hearing officer would be authorized to assess civil penalties against a manufacturer for continued noncompliance. Such penalties could 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 cannot exceed $25,000 per violation per day that the violation continues. For purposes of section 1969(l), a finding by the 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, would be considered a single violation.

IV. Discussion of Recommended Action

A. Issues Regarding Proposal

1. Heavy-Duty Vehicles

Representatives of the aftermarket have stated that the proposed regulations should apply to heavy-duty vehicles and engines (i.e., vehicles greater than 14,000 pounds gross vehicle weight) to ensure that service and parts providers for such vehicles have the information they need for proper repair of emission-related problems. Further, they contend that it would be appropriate to apply the regulation to such vehicles and engines because the U.S. EPA is considering including heavy-duty vehicles in its federal service information regulations.

Although recognizing the merits of the above arguments, the staff is proposing that application of the regulation be limited to light- and medium-duty vehicles at this time. This limitation is reflected in the statute itself in that SB1146 only applies to vehicles equipped with certified OBD II systems. California does not currently have any OBD requirements that apply to heavy-duty vehicles. Consequently, certain portions of the regulation (e.g., OBD system descriptions) would have no applicability. Other requirements, such as posting the full content of service manuals on the Internet, may not be practical in light of differences in the light- and heavy-duty vehicle service industries. Automobile manufacturers have stated that the heavy-duty service industry is smaller scale and more product specific than the light-duty industry, reducing the need for broad access to all manufacturers' service information.[11] Further, heavy-duty vehicle diagnostic tools and service procedures are typically different from those used for light-duty vehicles. Although resolution of these issues is probably not insurmountable, the ARB staff believes that attempting to extend applicability of this proposed regulation to heavy-duty vehicles at this time would delay and complicate the rulemaking process, and make it difficult, if not impossible, for the ARB to meet the time target set forth in SB1146 requiring ARB to adopt regulation by the end of this year. Therefore, the

[11] May 31, 2001, letter from Alliance of Automobile Manufacturers, and Association of International Automobile Manufacturers; May 30, 2001, letter from the Engine Manufacturers Association.

staff recommends that heavy-duty vehicle service information access be addressed at a later time, ideally when OBD requirements for heavy-duty vehicles are established.

2. Implementation Date

As discussed previously, the period of time allotted to a motor vehicle manufacturer to first make service information available is 180 days after the effective date of the regulations or January 1, 2003, whichever is later, for vehicles introduced into commerce on or before these dates. All other vehicles' service information must be provided 180 days after vehicles are introduced into commerce or at the same time that the information is made available to a motor vehicle manufacturer's dealerships, whichever is sooner.

Motor vehicle manufacturers have commented that the initial implementation date of the proposed regulations should coincide with implementation of the revised federal requirements. They propose that this should be set one year from the finalization of EPA's rulemaking.[12] The staff believes the intent of SB1146 is for ARB to adopt and implement service information requirements as soon as practical and independent of the timeline for U.S. EPA's completion of federal requirements. For purposes of harmonization, it is not necessary for the ARB and U.S. EPA to have identical implementation dates provided compliance is feasible. In this regard, the ARB staff believes that manufacturers should readily be able to comply with the requirements of the regulation by January 1, 2003. The basic elements of these and U.S. EPA's proposed regulations (i.e., the establishment of Internet sites) have been known for some time[13], and manufacturers will have had more than two years lead time from the signing of SB1146 by the time compliance must be achieved.

Aftermarket associations believe the implementation date should be 90 days from the effective date of the adopted regulation for existing vehicles, and no longer than 90 days from introduction into commerce for future vehicle models. Staff initially considered a 90-day implementation period for existing and future vehicles. However, several manufacturers stated that 90 days was not enough time to finish the job of organizing and reformatting data for Internet posting. At the time of initial implementation, manufacturers will be required to post information for up to eight-model years worth of vehicles. Therefore, staff believes that its proposed implementation dates are the earliest practical dates by which compliance can be expected.

3. Initialization Procedures

Many cars today utilize anti-theft systems integrated with vehicle on-board computers. These systems are typically referred to as "immobilizers".

[12] August 3, 2001, letter from Alliance of Automobile Manufacturers and Association of International Automobile Manufacturers
[13] SB1146 was first introduced in February 1999.

Immobilizers deter theft by disabling engine control functions within the on-board computer (e.g., preventing the fuel injectors from firing) when it has detected that the vehicle is not being started properly. For example, the immobilizer may confirm that the key being used to start the car is the right key for the vehicle.[14] Therefore, a copied key or "hot-wiring" could not be used to steal the car. For some manufacturers, technicians need to re-initialize the immobilizer after replacement of the on-board computer (or possibly after other repair work) in order for the vehicle to be started.

Independent technicians have not always had the information and/or tools in the past to be able to reinitialize these systems, which prevents them from fully completing repairs because initialization must still be done at a dealership. Such situations cause vehicle servicing to be time-consuming and inconvenient for the consumer. This, therefore, disadvantages independent service providers in conducting such repair work. With staff's proposal, covered persons will be granted access to vehicle initialization procedures to the same degree as provided to franchised dealerships in cases where necessary to restart vehicles after emission-related service or repair.

Most motor vehicle manufacturers appear to have no concerns with the statute's treatment of this issue or the staff's proposal to implement it. However, a small number of motor vehicle manufacturers are concerned that providing such capability outside of the dealership structure will compromise vehicle security, making vehicles easier to steal. They contend that under the proposed regulation they would be required to provide codes or other information to technicians, which could be misused to steal cars. The level of concern appears to depend on the design of the immobilizer system, the service procedures set up with dealerships to carry out re-initialization when necessary, and the historical theft rates of vehicle models.[15]

The ARB staff is also concerned with the issue of vehicle security, and does not want to create any reduction in anti-theft system integrity. Therefore, if a motor vehicle manufacturer believes that the release of such initialization information would create a situation whereby a vehicle's security is compromised, the ARB would allow a manufacturer to request additional lead-time from the Executive Officer. Upon a manufacturer properly demonstrating the risk to vehicle security and a plan that provides the aftermarket with reasonable alternative means to install computers on its vehicles,[16] the Executive Officer would be authorized to excuse the manufacturer from having to meet the initialization requirements through the 2004 model year. This should provide the manufacturer with sufficient time to make

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[14] In such cases, the keys for the vehicle typically have a microchip embedded into them which is sensed by the immobilizer system, similar to the way that card-keys are used to open secured office doors.

[15] Although some common elements exist, immobilizer design, function, and initialization differ from manufacturer to manufacturer.

[16] For example, a manufacturer could develop a program wherein its dealerships would re-initialize a motor vehicle at an independent repair facility in a timely manner so as not to inconvenience the consumer, or disadvantage the service provider.

necessary changes to the immobilizer design and how it is initialized. The staff believes that this proposal properly balances the need for manufacturers to maintain theft deterrence while providing the aftermarket with the means to properly service vehicles, including the ability to restart vehicles after repair or service.

Manufacturers have requested lead-time up to the 2008 model year so that design changes can be phased-in with planned product line changeovers. While the staff understands the convenience this timeframe would provide, it believes the requirement should be met as soon as reasonably feasible. Manufacturers have stated that designs are fixed approximately one year ahead of production. Therefore, the staff's proposed 2005 model year implementation deadline would provide manufacturers with two years of lead-time ahead of the date when designs should be set in place. The staff believes such lead-time is adequate for necessary design changes to be made.

The aftermarket industry has commented that SB1146 requires additional immobilizer information and/or equipment to be provided to on-board computer remanufacturers so that rebuilt on-board computers can be tested for proper function before being offered for sale.[17] It has stated that if manufacturers have vehicle security issues in providing such information, they can develop "black box" devices that connect to the on-board computer in the remanufacturing facility. These devices would initialize the immobilizer and permit the computer to be tested without providing any sensitive information directly to the rebuilder. Further, if necessary, licensing agreements could be set up in order to protect sensitive immobilizer design information.

The ARB staff has not included the request of the California Automotive Task Force into the proposed regulation for two reasons. The staff believes that such a requirement would not be consistent with the language of SB1146. Health and Safety Code section 43105.5(a)(5) specifically permits a motor vehicle manufacturer to use access or encryption codes on powertrain and transmission computers to prevent installation of computers that are not manufactured by the motor vehicle manufacturer or its original equipment suppliers. In so providing, the Legislature crafted an exception to the requirement prohibiting manufacturers from using such codes to prevent the use of aftermarket replacement parts.

The section that follows, 43105.5(a)(6), which requires manufacturers to disclose certain immobilizer initialization procedures, cannot be read to annul the purpose and intent of the security provisions that specifically apply to computers in section 43105(a)(5). To require motor vehicle manufacturers to provide "black-box devices" could potentially subject a manufacturer's security provisions to abuse.[18]

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[17] California Automotive Task Force letter, dated April 13, 2001.

[18] Motor vehicle manufacturers disagree with the aftermarket industry on the issue of whether the use of a black box device would prevent misuse of immobilizer information. The motor vehicle manufacturers contend that too much of the design of the immobilizer would have to be revealed in order to permit testing of the computer on a test bench apart from the vehicle. In their opinion, a black box would permit reverse engineering or could be used directly to steal vehicles.

That is why staff believes that section 43105.5(a)(6) specifically makes a distinction between on-board computers and other emission-related parts. For computers, the section provides that manufacturers must provide information that is necessary for initialization of the immobilizer system after installation of the computer. In contrast, for all other emission-related parts, initialization information must be provided that allows for proper initialization after the repair and replacement of such parts. (Emphasis added.) Arguably, repair and replacement would include the manufacture or remanufacture of such parts and that initialization information would be necessary to assure that the aftermarket is not excluded from performing such functions. Such a broad reading cannot, however, be inferred from the Legislature's use of the phrase "proper installation," which specifically applies to computers. Thus, in the staff's opinion, the Legislature could not have intended in section 43105.5(a)(6) to override the special recognition for the security that it established in section 43105.5(a)(5) for security.

4. Standardized Reprogramming Protocol

One manufacturer has expressed concern regarding staff's proposal to require manufacturers to conform to the specifications of SAE Recommended Practice J2534 by the 2004 model year for vehicles that can be reprogrammed in the field. As stated previously, conformance with this technical standard will allow independent service providers to purchase a single piece of computer hardware that can be used to reprogram any vehicle make or model. The manufacturer has stated that compliance with SAE J2534 will require computer modifications that will not be completed for all of its vehicle models by the 2004 model year. It thus proposes that the ARB adopt a phase-in schedule for the 2004 through 2007 model years. The ARB staff believes that full implementation for the 2004 model year is reasonable and appropriate as evidenced by the general support of this timing by other motor vehicle manufacturers. Further, the basic elements of the SAE's J2534 program were identified by the SAE subcommittee sometime ago and should be well known to all manufacturers. Consequently, most manufacturers have already considered the implications of the standard on vehicle design and have initiated plans to implement necessary on-board computer design changes. Nonetheless, the 2004 model year deadline would still provide manufacturers with up to two years of leadtime in order to make any necessary changes that remain. In the event that a manufacturer cannot comply with the requirements of SAE J2534 for a specific model by the 2004 model year, it may elect to comply with the regulation by not offering field-reprogramming capability to franchised dealerships until the vehicle model is designed to the SAE standards.

5. Internet Website Guidelines

Motor vehicle manufacturers have argued that the performance specifications for Internet websites are outside the authority of the ARB. Contrary to this contention, the Legislature specifically directed the ARB to adopt regulations requiring motor vehicle manufacturers to make available to all covered persons service-related information "by reasonable business means, including, but not limited to, use of the Internet…" (Health and Safety Code section 43105.5(a)). The ARB

staff has interpreted this directive to mean that, at a minimum, regulations must be adopted that provide access to information set forth in section 43105.5 by means of the Internet. To this end, the ARB has proposed regulation that would require manufacturers to have information available on the Internet by no later than January 1, 2003 or 180 days from the date that the proposed regulations become effective, whichever is later. To assure that information can be readily accessed, and is therefore "available" within the meaning of Health and Safety Code section 43105.5, the proposed regulation includes minimum website performance criteria, Title 13, CCR, section 1969(e)(2)(L). These criteria are neither overly prescriptive nor unduly burdensome, and when balanced against the stated purposes and intent of SB1146, clearly fall within the delegated authority of the ARB.

6. Search Engines

Staff initially proposed that users of service information websites be able to search for service information by a number of query terms: vehicle model, model year, vehicle identification number (VIN), part number, bulletin number, diagnostic procedure, and trouble code. Several vehicle manufacturers have argued that creating a search engine that utilizes VINs or part numbers would place an undue burden on them because it requires them to rewrite much of their existing service information into a format that lends itself to such searches. This process would likely require both extensive financial investment and extensive lead-time to develop. The staff's initial reason for proposing such search capabilities was to provide a fast way for service technicians to navigate to the precise service information needed. Manufacturers countered that the technician could quickly input the relevant information from the VIN (manufacturer name, model year, vehicle model, etc.). Regarding part number searches, manufacturers state that service information typically is not indexed by part number because these numbers often vary from model to model, and can even change mid-year (e.g., if a new component supplier is used). The burden and complexity of tracking all part numbers would be far disproportionate to any benefit for service technicians. Staff has accepted these arguments and, therefore, will not require vehicle manufacturers to use VIN and part number searches.

7. Third-Party Information Providers

Historically, third-party service information providers, such as Mitchell Repair Information Company or Alldata LLC, have supplied consolidated service information to independent service providers. These companies organize and format service information provided to them by motor vehicle manufacturers through licensing agreements. Shops that service several makes of vehicles often use these third-party sources because the information provided meets the technicians' basic needs at a cost that is typically lower than information direct from the motor vehicle manufacturers. The aftermarket Industry has suggested that the proposed regulation should require manufacturers to provide service information to third-party suppliers for this purpose as a way of further fostering competition that would improve service information quality and ensure low costs.

The ARB staff believes that third-party information providers offer a valuable service to the automotive service and repair industry. The staff supports, and even encourages, business relationships between the motor vehicle manufacturers and third-party information providers. The availability of service information in various formats and varying content levels provides automotive service facilities with choices that will allow them to optimize service information purchases in terms of content and price. The staff, however, does not believe that the ARB should mandate licensing agreements between vehicle manufacturers and third-party providers, or otherwise govern the terms of such agreements. Doing so would ultimately require ARB staff to mediate business agreements resulting in an effort that staff believes would be inappropriate and impractical. Further, third-party providers have a history of establishing viable business relationships with vehicle manufacturers absent regulation, indicating that these relationships offer benefits to both sides. Accordingly, the staff believes that prescribing specific requirements for third-party licensing is unnecessary at this time.

B. Differences Between Proposed Federal Regulations and California Regulations

The U.S. EPA's proposed regulations for service information (as specified in its June 8, 2001, Notice of Proposed Rulemaking) are very similar in most respects to the ARB's proposed rulemaking. Yet some differences do exist, as described below. These differences are based on the fact that ARB staff's proposals are governed by specific language in SB1146, or due to slight differences of approach regarding how specific aspects of the requirements (e.g., information pricing, and website performance guidelines) should be implemented. In any event, the ARB staff and U.S. EPA have been careful to ensure that the respective regulations do not require manufacturers to produce two different forms of the same information (e.g., requirements that OBD II descriptions be formatted in two different ways).

1. Internet Pricing Structures

In its NPRM, the U.S. EPA proposed that motor vehicle manufacturers create at least a three-tiered approach for access to manufacturer websites. For each tier, the U.S. EPA would set a maximum price that is considered fair and reasonable. The main consideration behind these tiers is the anticipated differences in the usage of the websites. They are as follows:

a. Short-term access. A timeframe of approximately 24 hours. The maximum a manufacturer could charge for service information during this period would be $20.
b. Mid-term access. A timeframe of 30 days. The maximum a manufacturer could charge for service information during this period would be $300.
c. Long-term access. A timeframe of 365 days. The maximum a manufacturer could charge for service information during this period would be no more than $2500.

While specific pricing such as proposed by U.S EPA provides clear guidance to the parties and perhaps facilitates enforcement, the ARB, at this time, does not possess sufficient data to make such a proposal. Instead, staff believes that the pricing factors that it is proposing will be effective in ensuring that motor vehicle manufacturers implement fair, reasonable, and nondiscriminatory pricing. The proposal provides for necessary flexibility and allows for prices to be set relative to the quality, quantity, and means of distribution[19] of the information.

2. Internet Performance Reports

To determine if manufacturers' websites are compliant with the regulations, both the U.S. EPA and the ARB propose to require annual reports that explain how effective the websites are in providing required information to the aftermarket. However, the U.S. EPA proposal requires that motor vehicle manufacturers include in those reports a number of specific quantitative criteria (e.g., total number of successful requests, total number of failed requests) for which data must be collected. No specific types of information are mandated in the reports required by the ARB. ARB staff's proposal would instead provide the manufacturer with flexibility to provide the information it believes demonstrates adequate website performance. Given the dynamic nature of the Internet, it does not seem appropriate at this time to narrowly define performance criteria that cannot be adequately gauged or benchmarked to an accepted standard. Nevertheless, the ARB would require manufacturers to provide it with a copy of any reports submitted to the U.S. EPA under its regulation. Such a requirement would not be burdensome since the reports must be prepared in any event, and the information could be helpful in ultimately determining acceptable quantitative performance levels.

3. Training materials

The U.S. EPA proposes that motor vehicle manufacturers videotape and/or provide satellite transmissions of their training classes for use by requesting covered persons. ARB staff's proposal includes all such information that the manufacturer has created, but does not require manufacturers to record classes for the purpose of making the recording available. While the staff believes that creating these training materials could be useful to aftermarket service providers, it believes that such a requirement is beyond the scope of SB1146.

V. Air Quality, Environmental and Economic Impacts

A. Air Quality and Environmental Impacts

The proposed regulation will have a positive impact on air quality by providing independent automobile service providers with the tools and information necessary to effectively diagnose and repair emission-related malfunctions. However, instead of creating new emission reductions, the proposed regulation will help ensure that

[19] i.e, whether the information is viewed directly online, or after downloading specific documents from the website.

the emission benefits attributed to California's Low Emission Vehicle (LEV) and OBD II programs will be fully realized. In estimating the emission benefits of OBD II at the time the requirements were put in place, the staff worked under the assumption that identified malfunctions would be promptly and effectively repaired. Thus, vehicle emissions would be maintained close to certified levels throughout their operating lives. The availability of emission-related service information on a widespread scale gives consumers a choice on who will repair their vehicle, causing owners to be more likely to service their vehicles promptly once the malfunction indicator light is illuminated. For reference, the ARB has estimated the following emission reductions of reactive organic gases (ROG), carbon monoxide (CO), and oxides of nitrogen (NOx) in the South Coast Air Basin for its OBD II and LEV programs to be 6, 120, and 51 tons per day, respectively, by the year 2010.[20] On a statewide basis, the emissions reduced will be 9 (ROG), 337 (CO), and 146 (NOx) tons per day by 2010.

B. Economic Impacts

The Administrative Procedures Act requires that, in proposing to adopt or amend any administrative regulation, state agencies shall assess the potential for adverse economic impacts on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states, and fiscal impacts on state and local agencies. Below is staff's assessment of the economic impacts of this proposal.

1. Cost to State Agencies

As recognized in an August 9, 2000, California Assembly Committee analysis on the fiscal effect of Senate Bill 1146, it is estimated that the ARB will incur ongoing costs of up to $200,000 annually to implement and enforce the regulation. Additionally, through 2009, the Department of Consumer Affairs will be required by Health and Safety Code section 43105.5(g), in conjunction with the ARB, to report to the State Legislature annually on the effectiveness of the regulation. The estimated cost to the Department is not expected to exceed $75,000 per year. The proposed regulation is not expected to create additional costs to any other state agency, local district, or school district, including any federally funded state agency or program.

2. Costs to Motor Vehicle Manufacturers

The proposed service information regulations will have the largest and most direct effect on the 34 motor vehicle manufacturers that certify passenger cars, light-duty trucks, and medium-duty vehicles for sale in California. These manufacturers are responsible for making available the information required by the proposal on Internet websites, or if the manufacturer qualifies as a small volume manufacturer, through some other reasonable business mean. Only one manufacturer physically produces motor vehicles in California.

[20] These emission reductions are based on values stated in the ARB's staff report on the amendments to the Low Emission Vehicle (LEV II) regulations.

The staff has estimated the cost of the proposed regulations to motor vehicle manufacturers using figures provided by the manufacturers themselves. Many motor vehicle manufacturers will need to invest capital for the conversion of service manuals, OBD II information, etc. into an electronic format that is suitable for Internet access. Such cost estimates range from approximately $600,000 to $5 million (median cost of $2.8 million), depending on the extent of a manufacturer's existing hardware and software capabilities. Currently, the majority of motor vehicle manufacturers do not have dedicated service information websites on the Internet. Motor vehicle manufacturers must also maintain their Internet websites by updating service information on a regular basis. It is estimated that such costs would range from $150,000 to $450,000 annually (median cost of $300,000). As explained throughout this report, the U.S. EPA is concurrently proposing that manufacturers develop and maintain Internet websites for the distribution of service information to the aftermarket. The proposed regulation should not require motor vehicle manufacturers to incur any additional costs beyond those required to meet the amended federal regulation.

The ARB does not believe that these costs will result in a significant increase in the price of vehicles. The regulation permits manufacturer to charge reasonable prices for the service information that must be made available, taking into account the cost to provide such information. Therefore, much if not all of these costs can be recovered. Any remaining costs are expected to be minimal relative to the volume of vehicles that the majority of these manufacturers produce annually for sale in California.

3. Potential Impacts on Other Businesses

The regulations should have a positive impact on independent service repair facilities and aftermarket manufacturers through the wider accessibility of emission-related service information and tools. Covered persons such as independent service facilities and aftermarket part manufacturers should only incur additional expenses as part of this regulation if they chose to purchase additional information and tools. However, in doing so, it is assumed that the purchases will be based on business decisions wherein the use of the information would be expected to yield a profit. The cost of purchasing such information should be equal to or less than the costs under the existing federal service information rulemaking given that the Internet would be replacing the underutilized FedWorld database.

Franchised dealerships may likely experience some loss of business as independent facilities conduct more repairs using the service information that would be provided by this rulemaking. However, this stimulation of competition in the service and repair industry was in fact the goal of SB1146 and thus, such an effect was clearly recognized by the California Legislature when the bill was drafted.

4. Potential Impact on Business Competitiveness

The proposed regulation is expected to have no net effect on the ability of California businesses to compete with businesses in other states. Adoption of the

regulations would allow California independent service facilities to compete more evenly with manufacturer dealerships within the state since they will be able to access the same types of repair information available to franchised dealerships. Since, for the most part, the competition between the aftermarket and franchised dealerships is of an intrastate origin, the regulation should have no effect on the ability of California businesses to compete with businesses in other states. Moreover, federal service information regulations will be substantially similar to those proposed for California and thus, no significant differences would exist in the types of service information that California businesses receive compared to businesses in other states. The ARB expects that motor vehicle manufacturers will offer the exact same information and tools in all 50 states.

5. Potential Impact on Employment

The regulatory proposal would not likely result in the loss of jobs. In fact, it may create some jobs in California. Motor vehicle manufacturers would have a new need for skilled employees that are capable of designing, creating, and maintaining service information websites. Further, although some business may move from dealerships and independent service providers, the staff does not expect any overall reduction in motor vehicle repair work, and thus, no reduction in California jobs. To the extent that more competition in the service industry is achieved, lower prices and better service could offer incentive for more vehicle owners to seek repairs, possibly resulting in increased employment.

B. Regulatory Alternatives

1. No action

Staff rejected this alternative because SB1146 specifically mandates that the ARB develop regulatory language for the availability of emission-related service information. Failing to do so would be a failure to act on California Law.

2. Adopt federal service information regulations

The U.S. EPA's regulations for service information were originally adopted in 1995. These regulations require that service information be listed on the FedWorld database and made available for purchase, but this method of dissemination has proven cumbersome because of a lack of awareness about its existence and its difficulty of use. To address these perceived deficiencies in the original federal regulations, the U.S. EPA proposed amended regulations in June 2001 that are intended to be implemented six months after the effective date; however, it is uncertain as to exactly when they will become effective. As currently proposed, the federal requirements would effectively implement most of the requirements of SB1146. However, simple adoption of the federal requirements would not fully address the responsibilities placed on the ARB by the California Legislature and SB1146.

Health and Safety Code Section 43105.5 requires that the ARB adopt state regulations for service information no later than January 1, 2002. Currently, it does not appear that the U.S. EPA regulations will be effective before that time. Therefore, the ARB cannot currently reference a set of federal regulations that would come close to meeting the requirements of the statute. It is staff's intent, however, to minimize differences between federal and state regulations and to harmonize wherever possible. Doing so will eliminate the chances that motor vehicle manufacturers will need two different compliance plans to obtain the same purpose. In the long term, it may be possible for the ARB to substitute references to U.S. EPA requirements for specific California regulation provisions. The ARB staff plans to work with the U.S. EPA and stakeholders to explore these possibilities in the future.

Secondly, the statute specifically charges the ARB with enforcement and reporting activities relative to the service information regulation, including issuance of notices to comply, participation in administrative hearings, and yearly reports to the legislature. The statute does not permit the ARB to consider relying on federal efforts to enforce U.S. EPA service information requirements.

3. Conclusion

Staff has determined that no feasible alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective or less burdensome to affected private persons than the proposed regulations.

VI. Summary and Staff Recommendation

The Staff's proposal would fully and effectively implement the requirements of SB1146 to provide greater access to emission-related motor vehicle service information and diagnostic tools. The regulations in this proposal are necessary to ensure a suitable environment for independent businesses in California to compete with motor vehicle manufacturers and their franchised dealerships for consumers' business when it comes to the repair of their vehicles. The widespread availability of emission-related service information to all service repair facilities would ensure that repair work is accurate, thorough and complete, thereby providing all of California's citizens with the air quality benefits associated with properly maintained vehicles. Furthermore, aftermarket parts manufacturers will be able to use necessary service information to fabricate components that will work compatibly with the advanced emission control systems of today's cars and trucks.

The regulation duly provides for the disclosure of service information as envisioned by the State Legislature when SB1146 was signed into law. However, in doing so, the requirements are also substantially similar to those contained in the U.S. EPA's proposed amendments for service information. ARB and U.S. EPA staff have worked cooperatively to ensure that its respective regulations will not be in conflict with each other.

Consequently, staff recommends that the Board adopt the proposed regulations for service information as outlined in Title 13, CCR, section 1969, and the proposed administrative procedures for review of Executive Officer determinations as outlined in Title 17, CCR, sections 60060.1 through 60060.34.

VII. References

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Senate Bill 1146: Motor Vehicles: Pollution Control Devices, authored by State Senator John Burton; approved by Governor Gray Davis September 30, 2000.

Title 13, California Code of Regulations, Section 1968.1.

April 13, 2001, letter from California Automotive Task Force

April 13, 2001, letter from Kirkland and Ellis regarding ARB's Service Information Rulemaking

April 17, 2001, letter from Volkswagen of America on behalf of Rolls Royce & Bentley Motor Cars.

May 30, 2001, letter from Engine Manufacturers Association regarding California ARB Mail-Out #MSO 2001-04 – Proposed Regulations for the California Motor Vehicle Service Information Rulemaking

May 30, 2001, letter from American Honda Motor Co., Inc.

June 18, 2001, letter from Subaru of America, Inc. (Marked Confidential)

August 7, 2001, letter from Alliance of Automobile Manufacturers and Association of International Automobile Manufacturers regarding Service Information Rulemaking (Mail-Out #MSO 2001-09).

August 7, 2001 (via e-mail), letter from California Automotive Task Force, regarding Aftermarket Comments on Mail-Out #MSO 2001-09.

August 14, 2001, letter from American Honda Motor Co., Inc. regarding Service Information Rulemaking – MSO 2001-09 (Marked Confidential)