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Part II

Environmental Protection Agency

40 CFR Part 86

**Control of Air Pollution From Motor
Vehicles and New Motor Vehicle Engines;
Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-7509-8]

RIN 2060-AG13

Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for Use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action finalizes modifications to EPA's Service Information regulations for light-duty vehicles and trucks, including requiring Original Equipment Manufacturers

(OEMs) to: make full text emissions-related service information and training information available via the World Wide Web; provide equipment and tool companies with information that allows them to develop equipment with pass-through reprogramming capabilities; make available enhanced diagnostic information to equipment and tool companies; make available OEM-specific diagnostic tools for sale to interested parties and; make available additional OBD technical information that OEMs must provide. In addition, today's final rule extends the availability of emission-related service information to heavy-duty engines and vehicles weighing 14,000 pounds or less beginning in the 2005 model year.

DATES: This final rule takes effect on August 26, 2003. The incorporation by reference of certain publications listed in the rule is approved August 26, 2003.

ADDRESSES: All comments and materials relevant to this rulemaking are contained in EPA Air Docket No. A-2000-49 at the following address: EPA Docket Center (EPA/DC), Public Reading

Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566-1742, and by facsimile at (202) 566-1741. The telephone number for the Air Docket is (202) 566-1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734-214-4288, Internet e-mail "pugliese.holly@epa.gov."

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacturer new motor vehicles and engines. Regulated categories include:

| Category | NAICS Codes ¹ | SIC codes ² | Examples of potentially regulated entities |
|----------------|----------------------------|------------------------|--|
| Industry | 336111 336112 336120 | 3711 | Motor Vehicle Manufacturers. |

¹ North American Industry Classification System (NAICS)

² Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.099-17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Rulemaking Documents Through the Internet

The preamble, regulatory language and regulatory support documents are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. The official EPA version is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air

Quality also publishes these notices on the secondary Web site listed below.

(1) <http://www.epa.gov/docs/fedrgstr/EPA-AIR/> (either select desired date or use Search feature)

(2) <http://www.epa.gov/OTAQ/> (look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. What Is the Important Background Information for This Final Rule?

Section 202(m)(5) of the CAA directs EPA to promulgate regulations requiring OEMs to provide to:

any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, * * * any and all information needed to make use of the [vehicle's] emission control diagnostic system * * * and such other information including instructions for making emission-related diagnoses and repairs. Such requirements are subject to the requirements of section 208(c) regarding protection of trade secrets; however, no such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to its franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicles.

On August 9, 1995, EPA published a final rulemaking (60 FR 40474) which set forth the Agency's service information regulations. These regulations, in part, required each Original Equipment Manufacturer (OEM) to do the following: (1) List all of its emission-related service and repair information on a Web site called FedWorld (including the cost of each item and where it could be purchased); (2) either provide enhanced information to equipment and tool companies or make its OEM-specific diagnostic tool available for purchase by aftermarket technicians, and (3) make reprogramming capability available to independent service and repair professionals if its franchised dealerships had such capability. These requirements were intended to ensure that aftermarket service and repair facilities have access to the same emission-related service information, in the same or similar manner, as that provided by OEMs to their franchised dealerships.

Industry estimates indicate that independent technicians perform up to 80% of all vehicle service and repairs.

Further, independent technicians perform more repairs on older vehicles (which are more likely than newer vehicles to have high emissions) than technicians in franchised dealerships. These conclusions are confirmed by statistics issued from the Motor and Equipment Manufacturers Association (Automotive Industry Status Report, 1999. EPA Air Docket A-2000-49, item II-F-05) that (1) the level of excess emissions increases as a vehicle's mileage increases, and (2) the percentage of non-dealer repairs increased and dealer repairs decreased as a vehicle's mileage increased and warranty coverage is no longer an issue.

In addition, OEM comments submitted during the comment period for the prior service information proposal (56 FR 48278, September 24, 1991) spoke to the integral role aftermarket technicians play in servicing the approximately 200 million vehicles in use. Many OEMs indicated that the number of service bays in their franchised dealerships are inadequate to service their fleets of vehicles and that they depend on aftermarket technicians to provide service for their customers' vehicles, especially for those vehicles out of warranty (See "Response to Comments" document for the August 1995 Final Rule, Docket A-90-35, Item V-C-02). This further highlights the need for independent technicians to have access to timely and appropriate emission-related repair and service information.

Since 1995, the Agency has gained experience in the implementation of the service information requirements. Additionally, changing technology has made it necessary to revisit the current requirements to take advantage of advanced technology.

As a result of our experience in implementing the 1995 regulations, EPA proposed revisions to those regulations on June 8, 2001 (66 FR 30830). The proposal highlighted several main areas for revision. First, we proposed that OEMs make full text emissions-related service information available via the World Wide Web. Second, we proposed that OEMs provide equipment and tool companies with information that allows them to develop pass-through reprogramming tools. Third, we proposed that OEMs make available enhanced diagnostic information to equipment and tool manufacturers and to make available OEM-specific diagnostic tools for sale. In addition, we proposed extending the service information requirements to the availability of emission-related service information for heavy-duty vehicles up to 14,000 pounds.

Today's final regulations are intended to preserve freedom of choice by consumers in where to have their vehicles serviced.

II. What Are the Requirements of This Final Rule?

A. What Information Is Required To Be Made Available by OEMs Under This Final Rule?

Today's action finalizes a provision that requires OEMs to make available to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines all information necessary to make use of the OBD systems and any information for making emission-related repairs, including any emissions-related information that is provided by the OEM to franchised dealers. This information includes, but is not limited to, the following:

- (1) Manuals, technical service bulletins (TSBs), diagrams, and charts (the provisions for training materials, including videos and other media are discussed in Section IIIB).
- (2) A general description of the operation of each monitor, including a description of the parameter that is being monitored.
- (3) A listing of all typical OBD diagnostic trouble codes associated with each monitor.
- (4) 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.
- (5) A listing of each monitor sequence, execution frequency and typical duration.
- (6) A listing of typical malfunction thresholds for each monitor.
- (7) For OBD parameters that deviate from the typical parameters, the OBD description shall indicate the deviation for the vehicles it applies to and provide a separate listing of the typical values for those vehicles.

(8) 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, EE Diagnostic Test Modes.

(9) Any information related to the service, repair, installation or replacement of parts or systems developed by third party (Tier 1) suppliers for OEMs, to the extent they are made available to franchise dealerships.

(10) Any information on other systems that can directly effect the emission system within a multiplexed

system (including how information is sent between emission-related system modules and other modules on a multiplexed bus),

(11) Any information regarding any system, component, or part of a vehicle monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL).

(12) Any other information relevant to the diagnosis and completion of an emissions-related repair. This information includes, but is not limited to, information needed to start the vehicle when the vehicle is equipped with an anti-theft or similar system that disables the engine described below in paragraph (13). This information also includes any OEM-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides, and/or repair procedures associated with these OEM-specific DTCs.

(13) OEMs shall make available computer or anti-theft system initialization information necessary for the proper installation of on-board computers on motor vehicles that employ integral vehicle security systems or the repair or replacement of any other emission-related part. OEMs are not required to make this information available on the OEM's Web site unless they choose to do so. However, the OEM's Web site shall contain information on alternate means for obtaining the information and/or ability to perform reinitialization. Beginning with the 2008 model year, we require that all OEM systems will be designed in such a way that no special tools or processes will be necessary to perform re-initialization. In other words, EPA expects that the re-initialization of vehicles can be completed with generic aftermarket tools, a pass-through device, or an inexpensive OEM-specific cable. This model year cut-off is consistent with the requirement to complete the phase-in of the SAE J2284-3 CAN requirement as discussed in section 18 of this document. An OEM may request Administrator approval for an alternative means to re-initialize vehicles for some or all model years through the 2007 model year. The complete regulatory requirements for requesting approval can be found in Sections 86.096-38(g)(6) and 86.1808-01(f)(6).

Information for making emission-related repairs does not include information used to design and manufacture parts, but may include OEM changes to internal calibrations, and other indirect information, as discussed below.

We also believe that OEMs are accountable for the accuracy of their service information, for both their dealerships and the aftermarket repair industry. Moving toward Internet-based delivery of service information should increase the ability of OEMs to more quickly respond to errors in their service information and provide updates to the required information for all interested parties in a timely manner.

B. What Are the Requirements for Web-Based Delivery of the Required Information Under This Final Rule?

1. OEM Web Sites

Today's action finalizes a provision that requires OEMs to make available in full-text all of the information outlined above, on individual OEM Web sites. The only exceptions to the full-text requirements are training information, anti-theft information, and indirect information. Provisions for the availability of training information is discussed in section II(D) of this document. Provisions for the availability of anti-theft information is discussed in section II.A(13). Provisions regarding indirect information are discussed in section II.E through II.I of this document. OEM Web sites must be launched six months after the date of publication of this rulemaking. OEMs may request from the Administrator up to an additional six months to launch their Web sites.

2. Timeliness and Maintenance of Information on OEM Web Sites

Today's action finalizes a provision that requires OEMs to make available the required information on their Web site within six months of model introduction. After this six month period, the required information for each model must be available and updated on the OEM Web site at the same time it is available by any means to their dealers.

EPA is also finalizing a provision that, beginning with the 1996 model year, OEMs maintain the required information in full text for at least 15 years after model introduction. After this fifteen-year period, OEMs can archive the required service information, but it must be made available upon request, in a format of the OEM's choice (e.g. CD-ROM).

3. Accessibility, Reporting and Performance Requirements for OEM Web Sites

(a) Accessibility Requirements. EPA is finalizing the following provisions for accessibility to OEM Web sites. Each OEM shall:

(1) Provide users with a description of the minimum computer hardware and software needed by the user to access that OEM's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the OEM's Web site.

(2) Allow the user to search the OEM Web site by various topics including but not limited to model, model year, key words or phrases, etc., while allowing ready identification of the latest vehicle calibration. OEMs who do not use model year to classify their vehicles in their service information may use an alternate vehicle delineation such as body series. Any OEM utilizing this flexibility shall create a cross-reference to the corresponding model year and provide this cross-reference on the OEM Web site home page.

(3) Provide accessibility using common, readily available software and shall not require the use of proprietary software, hardware, viewers, or browsers. The OEM Web site shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the OEM Web site.

(4) Allow access to the OEM Web sites with no limits on the modem speed by which aftermarket service providers or other interested parties can connect to the OEM Web site.

(b) Performance and Reporting Requirements. Today's action finalizes a provision that requires OEMs to report on the performance of their Web sites. OEMs shall monitor the following parameters:

(1) Total successful requests (measured in number of files including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, i.e., electronic images such as wiring or other diagrams or pictures). This is defined as the total successful request counts of all the files which have been requested, including pages, graphics, etc.

(2) Total failed requests (measured in number of files). This is defined as the total failed request counts of all the files which were requested but failed because they could not be found or were read-protected. This includes pages, graphics, etc.

(3) Average data transferred per day (measured by bytes). This is defined as average amount of data transferred per day from one place to another.

(4) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests each day of the week, over the time period given at the beginning of the report.

(5) Daily report (measured in number of files/pages by the day of the month). This is defined as how many requests there were in each day of a specific month.

(6) Browser Summary (measured in number of files/pages by browser type, *i.e.*, Netscape, Internet Explorer). This is defined as the versions of a browser by vendor.

(7) Any other information deemed necessary by the Administrator to determine the adequacy of an OEM Web site.

OEMs may request Administrator approval to report on parameters other than those described above if the OEM can demonstrate that those alternate parameters will provide sufficient and similar information for EPA to effectively evaluate the OEM Web site.

EPA will work with OEMs and issue further guidance regarding requirements to outline a consistent format and timing of submission.

Performance reports will be submitted to the Administrator annually or upon request by the Administrator. EPA will issue additional direction in the form of official manufacturer guidance to further specify the process for submitting reports to the Administrator.

In addition, EPA is finalizing a provision that requires OEMs to launch Web sites that meet the following performance criteria:

(1) OEM Web sites shall possess sufficient server capacity to allow ready access by all users and have sufficient downloading capacity to assure that all users may obtain needed information without undue delay;

(2) Broken Web links shall be corrected or deleted weekly;

(3) Web site navigation does not require a user to return to the OEM home page or a search engine in order to access a different portion of the site.

4. Structure and Cost of OEM Web Sites

In addition to the requirements described above in section II.3, OEMs shall also establish a three-tiered approach for the access to their Web-based service information. These three tiers include, but are not limited to short-term, mid-term, and long-term access to the required information.

(1) Short-Term Access. OEMs shall provide short-term access for a period of 24–72 hours whereby an aftermarket service provider will be able to access that OEM's Web site, search for the information they need, and purchase and/or print it for a set fee.

(2) Mid-Term Access. OEMs shall provide mid-term access for a period of 30 days whereby an aftermarket service provider will be able to access that

OEM's Web site, search for the information they need, and purchase and/or print it for a set fee.

(3) Long-Term Access. OEMs shall provide long-term access for a period of 365 days whereby an aftermarket service provider will be able to access that OEM's Web site, search for the information they need, and purchase and/or print it for a set fee.

In addition, for each of the tiers, OEMs are required to make their entire site accessible for the respective period of time and price. In other words, an OEM may not limit any or all of the tiers to just one make or one model.

EPA is not finalizing a provision that would require OEM's to allow for the downloading of information from their sites.

With regard to the issue of cost, EPA will not be finalizing any price caps for access to each of the tiers described above. However, prior to the official launch of OEM Web sites, each OEM will be required to present to the Administrator a specific outline of what will be charged for access to each of the tiers. OEMs must justify these charges, and submit to the Administrator information on the following parameters, which include but are not limited to, the following:

1. The price the manufacturer currently charges their branded dealers for service information. At a minimum, this must include the direct price charged that is identified exclusively as being for service information, not including any payment that is incorporated in other fees paid by a dealer, such as franchise fees. In addition, the manufacturer must describe the information that is provided to dealers, including the nature of the information (*e.g.*, the complete service manual), etc.; whether dealers have the option of purchasing less than all of the available information, or if purchase of all information is mandatory; the number of branded dealers who currently pay for this service information; and whether this information is made available to any persons at a reduced or no cost, and if so, identification of these persons and the reason they receive the information at a reduced cost.

2. The price the manufacturer currently charges persons other than branded dealers for service information. The manufacturer must describe the information that is provided, including the nature of the information (*e.g.*, the complete service manual, emissions control service manual), etc.; and the number of persons other than branded dealers to whom the information is supplied.

3. The estimated number of persons to whom the manufacturer would be expected to provide the service information following implementation of today's requirements. If the manufacturer is proposing a fee structure with different access periods (*e.g.*, daily, monthly and annual periods), the manufacturer must estimate the number of users who would be expected to subscribe for the different access periods.

A complete list of the criteria for establishing reasonable cost can be found in sections 86.094–38, paragraph (g)(7) and 86.1808–01, paragraph (f)(7) of the regulatory language for this final rule. Subsequent to the launch of the OEM Web sites, OEMs are required to notify the Administrator upon the increase in price of any one or all of the tiers of twenty percent or more accounting for inflation or that sets the charge for end-user access over the established price guidelines discussed above, including a justification based on the criteria for reasonable cost as established by this regulation.

5. Hyperlinking To and From OEM Web Sites

Today's action finalizes a provision that requires OEMs to allow direct simple hyperlinking to their Web sites from government Web sites and from all automotive-related Web sites, such as aftermarket service providers, educational institutions, and automotive associations.

6. Administrator Access to OEM Web Sites

Today's action finalizes a provision that requires that the Administrator shall have access to each OEM Web site at no charge to the Agency. The Administrator shall have access to the site, reports, records and other information as provided by sections 114 and 208 of the Clean Air Act and other provisions of law.

7. Information for Pre-1996 Model Years on OEM Web Sites

Today's action finalizes a provision that each OEM shall index their available information for model years 1994 and 1995 with a title that adequately describes the contents of the document to which it refers. OEMs may develop a system that allows interested parties to order this information directly from their Web site, or another Web site hyperlinked to the OEM Web site. Any OEM who does not develop such a system must list a phone number and address where aftermarket service providers can call or write to obtain the desired information. OEMs must also

provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, OEMs shall update the index as appropriate. OEMs will be responsible for ensuring that their information distributors do so within one regular business day of receiving the order. Items that are less than 20 pages (*e.g.* technical service bulletins) shall be faxed to the requestor and distributors are required to deliver the information overnight if requested and paid for by the ordering party. Archived information must be made available upon demand at a fair and reasonable price.

8. Other Media

We are finalizing this provision as proposed which requires OEMs to make available for ordering the required information in some format approved by the Administrator directly from their Web site after the required full-text window of 15 years has expired. Each OEM shall index their available information with a title that adequately describes the contents of the document to which it refers. In the alternate, OEMs may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the OEM Web site. OEMs are required to list a phone number and address where aftermarket service providers can call or write to obtain the desired information. OEMs must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, OEMs shall update the index as appropriate. OEMs will be responsible for ensuring that their information distributors update information within one regular business day of receiving the updated information for the index. Items are less than 20 pages (*e.g.* technical service bulletins) shall be faxed to the requestor and distributors are required to deliver the information overnight if requested and paid for by the ordering party.

9. Small Volume Provisions for OEM Web Sites

Today's action finalizes a provision that requires OEMs who are issued certificates of conformity with annual sales of less than one thousand vehicles are exempt from the full-text Internet requirements, provided they present to the Administrator and obtain approval for an alternative method by which emissions-related information can be obtained by the aftermarket or other interested parties.

These small-volume flexibilities are limited to the distribution and availability of service information via the World Wide Web under paragraph (3) of the regulations. All OEMs, regardless of volume, must comply with all other provisions as finalized in this rulemaking.

C. What Provisions Are Being Finalized for Service Information for Third Party Information Providers?

Today's action finalizes a provision that will require OEMs who currently have, or in the future engage in, licensing or business arrangements with third party information providers, as defined in the regulations, to provide information to those parties in an electronic format in English that utilizes non-proprietary software. Because of the timing of the finalization of this rule, information will have already been transmitted to third party information providers for the 2002, and probably the 2003 model years. Therefore, this provision applies to information for models 2004 and later. Any OEM licensing or business arrangements with third party information providers are subject to fair and reasonable cost requirements. We expect that OEMs will develop pricing structures for access to this information that make it affordable to any third party information providers with which they do business.

D. What Requirements Are Being Finalized for the Availability of Training Information?

1. Purchase of Training Materials for OEM Web Sites

Today's action finalizes two provisions for access to OEM training on OEM Web sites. First, OEMs will be required to make available for purchase on their Web sites the following items: training manuals, training videos, and interactive, multimedia CD's or similar training tools available to franchised dealerships. Second, we are finalizing a provision that OEMs who transmit emissions-related training via satellite or the Internet must tape these transmissions and make them available for purchase on their Web sites within 30 days after the first transmission to franchised dealerships. Further, all of the items included in this provision must be shipped within 24 hours of the order being placed and are to be made available at a reasonable price. We understand OEM concerns about the potential for increased demand of OEM training materials once the indices are posted on Web sites. Therefore, we will also finalize a provision that will allow for an exception to the 24 hour shipping

requirement in those circumstances where orders exceed supply and additional time is needed by the distributor to reproduce the item being ordered. These requirements apply for 1996 and later model year vehicles starting 4 months following the effective date of the Final Rule. For subsequent model years, the required information must be made available for purchase within three months of model introduction, and then be made available at the same time it is made available to franchised dealerships.

2. Third Party Access to OEM Training Material

We will finalize a provision that will require OEMs who utilize Internet and satellite transmissions to present emissions-related training to their dealerships to make these same transmissions available to third party training providers. In this way, we believe we are providing at least one opportunity for aftermarket technicians to receive similar emissions-related training information as provided to dealerships, thus furthering the goals and letter of section 202(m)(5). This requirement only requires OEMs to provide the same information to legitimate aftermarket training providers as is provided to dealerships and aftermarket service providers. It is not a requirement to license OEM copyrighted materials to these entities.

OEMs may take reasonable steps to protect their copyright to the extent some or all of this material may be copyrighted and may refuse to do business with any party that does not agree to such steps. However, we do expect OEMs to use fair business practices in its dealings with these third parties, in keeping with the "fair and reasonable price" requirements in these regulations. OEMs may not charge unreasonable up-front fees for access to these transmissions, but OEMs may require a royalty, percentage or other arranged fee based limits on a per-use or enrollment subscription basis.

E. What Requirements Are Being Finalized for the Reprogramming of Pre-*SAE J2534 Model Year Vehicles?*

Today's action finalizes a provision that allows OEMs to use J2534 technology on 1996 through 2003 model year vehicles as long as OEMs make all necessary additional hardware (*i.e.* cables) available for sale at a fair and reasonable price to the aftermarket to allow for the reprogramming of these vehicles. OEMs must make this additional hardware available for sale independently and cannot require the purchase of their OEM specific scan tool

in order to receive this additional hardware. If an OEM cannot retroactively implement the SAE J2534 pass-through reprogramming solution with or without special cables, they must make available to equipment and tool companies any information needed to develop aftermarket equivalents of their OEM-specific reprogramming hardware and software. This information must be provided to allow equipment and tool manufacturers to develop hardware and software equivalents to enhanced OEM scan tools. A full description of the information that must be provided under this scenario is described in sections 86.096–38g(11) and 86.1808–01(f)(11) of the regulatory language for this rulemaking.

F. What Requirements Are Being Finalized for Reprogramming of Vehicles With SAE J2534?

EPA will finalize a provision that will require OEMs to comply with SAE J2534 for pass-through reprogramming beginning with model year 2004. We will also finalize a provision that will require that reprogramming information be made available within one month after the effective date of the final rule for existing model years and within 3 months of vehicle introduction for new models. Any OEM who cannot comply with SAE J2534 in model year 2004 may request one year additional lead time from the Administrator.

G. What Requirements Are Being Finalized for the Availability of Reprogramming Capabilities From OEM Dealerships?

EPA will not finalize a provision that would require OEMs to make reprogramming services available to aftermarket service providers in a timely manner and a reasonable cost via their dealerships.

H. What Requirements Are Being Finalized for the Availability of Enhanced Information for Scan Tools for Equipment and Tool Companies?

1. Description of Information That Must Be Provided

Today's action finalizes a provision that requires the OEMs to make available to equipment and tool companies all generic and enhanced information, including bi-directional control and data stream information. In addition, OEMs must make available the following information:

(a) The physical hardware requirements for data communication (e.g. system voltage requirements, cable

terminals/pins, connections such as RS232 or USB, wires, etc.)

(b) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(c) Information on the application physical interface (API) or layers. (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, and termination)

(d) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

(e) Information that describes which interfaces, or combinations of interfaces, from each of the categories as described in paragraphs (g)(12)(vii)(A) through (D) of the regulatory language.

2. Distribution of Enhanced Diagnostic Information

Today's action finalizes a provision that will require the above information for generic and enhanced diagnostic information be provided to aftermarket tool and equipment companies with whom appropriate licensing, contractual, and confidentiality agreements have been arranged. This information shall be uploaded in electronic format using common document formats such as Microsoft Excel, Adobe Acrobat, Microsoft Word, etc. Further, any OEM licensing or business arrangements with equipment and tool companies are subject to a fair and reasonable cost determination.

I. What Requirements Are Being Finalized for the Availability of OEM-Specific Diagnostic Scan Tools and Other Special Tools?

1. Availability of OEM-Specific Diagnostic Scan Tools

Today's action finalizes a provision that OEMs must make available for sale to interested parties the same OEM-specific scan tools that are available to franchised dealerships, except as discussed below. These tools shall be made available at a fair and reasonable price. These tools shall also be made available in a timely fashion either through the OEM Web site or through an OEM-designated intermediary.

2. Decontesting of OEM-Specific Diagnostic Scan Tools

Today's action finalizes a provision that requires OEMs who opt to remove non-emissions related content from their OEM-specific scan tools and sell them to the persons specified in

paragraph (g)(2)(i) and (f)(2)(i) of the regulatory language for this final rule shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the OEM-specific tool shall be identical to the information that is contained in the complete version of the OEM-specific tool. Any OEM who wishes to implement this option must request approval from the Administrator prior to the introduction of the tool into commerce.

3. Availability of Special Tools

Today's action finalizes a provision that precludes OEMs from using special tools to extinguish the malfunction indicator light (MIL) beginning with model year 2004. For model years 1994 through 2003, OEMs who currently require such tools to extinguish the MIL must release the necessary information to equipment and tool companies to design a comparable generic tool. This information shall be made available no later than one month following the effective date of the Final Rule.

J. Which Reference Materials Are Being Finalized for Incorporation by Reference?

Today's action will finalize a provision requiring that OEMs comply with the following SAE Recommended Practices.

(1) SAE Recommended Practice J1930 (Revised, May, 1998), "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" beginning with the 2003 model year.

(2) SAE Recommended Practice J1979 (September, 1997), "EE Diagnostic Test Modes" Manufacturers shall comply with J1979 beginning with Model Year 2004.

(3) SAE Recommended Practice J2284–3 (May, 2001), "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS." For purposes of consistency with CARB requirements for CAN, we will finalize a provision that allows for the use of CAN beginning in the 2003 model year, with complete implementation required by the 2008 model year.

(4) SAE Recommended Practice J2534 (February, 2002), "Recommended Practice for Pass-Thru Vehicle Reprogramming". EPA will require that OEMs comply with SAE J2534 beginning with the 2004 model year.

These documents have been approved for Incorporation by Reference by the Office of the Federal Register on August 26, 2003. A copy of the approval can be found in EPA Air Docket A–2000–49,

Item # IV-H-05. Copies of the SAE documents are also available for viewing in EPA Air Docket A-2000-49.

K. What Requirements Are Being Finalized for the Availability of Heavy-Duty Service Information?

Today's action will finalize a provision that requires that OEMs of heavy-duty vehicles and engines up to 14,000 pounds GVW that are subject to OBD requirements meet the service information requirements beginning with model year 2005.

We will not extend these requirements to heavy-duty vehicles above 14,000 pounds at this time, because such vehicles are not subject to OBD requirements and because the differences between the service industry for such trucks make extension of the regulations for such trucks inappropriate without significant further discussion.

III. What Is the Cost of This Final Rule?

This Final Rulemaking alters existing provisions by revising the current service information regulations. The provisions finalized in today's rulemaking require OEMs to make available information and tools that have already been developed for use by their dealerships. Therefore, EPA believes that the changes finalized today put little or no new additional requirements on OEMs beyond administrative costs for providing access to existing information and tools, which are recoverable to the OEM as discussed below in Section V.D and in the Summary and Analysis of Comments.

IV. What Were the Opportunities for Public Participation?

On July 25, 2001, a public hearing was held. The public comment period was open until August 25, 2001. Comments were received from OEMs and their associations, aftermarket service providers and their trade associations, motor vehicle dealerships, state agencies, and private individuals. Because of the scope of the issues involved and raised by these comments, the following sections only briefly summarize comments on the major issues. For the complete response to comments, see the Response to Comments contained in EPA Air Docket A-2000-49, Item V-C-01.

V. What Were the Major Comments Received on the Proposed Rule?

Comments on a wide range of issues concerning the proposed service information requirements were received. Summarized here are the

comments concerning the major or controversial issues and the rationale behind EPA's final decisions. These issues are considered in more detail in the Summary and Analysis of Comments document prepared for this final rule and included in the docket noted earlier. Also in the Summary and Analysis of Comments document is consideration of other issues whose resolution is reflected in this final rule.

A. Required Information

(1) Summary of Proposal

EPA proposed in its general requirements in paragraph (2) of the regulations that OEMs shall furnish or cause to be furnished to service and repair facilities "any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including but not limited to service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information * * *" EPA proposed in paragraph (5) of the regulations a specific list of the information that OEMs would be required to make available on their OEM-specific Web sites. In particular, EPA proposed to require the availability of OBD generic drive cycle information, component operating ranges, and system logic flow diagrams.

(2) Summary of Comments

With regard to OBD generic drive cycles, the Alliance of Automobile Manufacturers (the Alliance), the Association of International Automobile Manufacturers (AIAM), and BMW commented that the term "OBD generic drive cycle information was not defined in the proposal. They are also concerned about operating the vehicle safely when attempting to ensure the monitors operated. The Alliance and AIAM commented that OEMs have agreed to provide a drive cycle for each major monitor, which should provide sufficient information to allow a service provider to determine if the monitors have been run over the drive cycle specified for that monitor. Further, the Alliance and AIAM commented that a service provider could operate all of the individual monitors over all of the cycles provided to ensure that all of the monitors have operated.

Several aftermarket service providers commented that both vehicle specific and generic OBD drive cycles be made available.

The Speciality Equipment Manufacturers Association (SEMA) commented that it is in the best interest of consumers and independent service providers for drive cycle information to be provided by each OEM. SEMA also commented that drive cycle information is necessary to set inspection and maintenance (I/M) readiness codes and therefore is crucial information for customer convenience and acceptance of OBD checks in I/M lanes. Additionally, SEMA commented that they do not agree with OEM comments that drive cycles should only be made available for each monitor. SEMA commented that it is necessary for each OEM to provide a consolidated drive cycle to reliably set all readiness codes in addition to providing generic drive cycles for each monitor.

The Equipment and Tool Institute (ETI) commented that they agree with the Alliance and AIAM recommendation that EPA revise the language to refer to monitor specific generic drive cycle versus an overall generic drive cycle.

With regard to OBD system operational information, the Alliance and AIAM commented extensively on EPA's proposal to make available OBD system operational information. First, the Alliance and AIAM commented that EPA's claims that some OEMs do not make adequate OBD information available to the aftermarket is unsubstantiated. The Alliance and AIAM further commented that OEMs have "huge motivation" to ensure that their service information meets the needs of both the dealership and the aftermarket. Second, the Alliance and AIAM commented that the Clean Air Act does not give EPA the authority to dictate the content of OEM service information. The Alliance and AIAM further commented that OEMs make available to the aftermarket all of the diagnostic information that is made available to their dealers which has been structured in such a way to lead service technicians through the diagnostic process. Third, the Alliance and AIAM commented that EPA does not indicate the purpose or need for requiring every component operating range and that this type of information is not needed in all cases to make emissions-related repairs, and that providing such information could be a huge task. Fourth, the Alliance and AIAM comment that some OEMs consider OBD system logic flow diagrams to be proprietary information because they can contain algorithms specific to an OEM. Lastly, the Alliance and AIAM commented that in the recent Service Information proposal issued by

the California Air Resources Board (CARB), it was proposed that OEMs make available a general description of their OBD systems which includes a general description of the operation of each monitor and the parameters that are being monitored. CARB also proposed that additional information be made available such as diagnostic codes associated with each monitor; typical enable conditions for the monitors; a general sequence of events, execution frequency and duration; and typical malfunction thresholds. The Alliance and AIAM commented that this type of information is sufficient to service OBD related problems and to go beyond what CARB has proposed is unnecessary. The Alliance and AIAM commented that EPA should adopt requirements consistent with those proposed by CARB.

The Westchester/Putnam chapter of the Service Technicians Society commented that information such as system logic, including monitor strategies, related components by each monitor and range/response times for sensor inputs need to be made available to aftermarket service providers. Additionally, they commented that information on parameters for all sensors and actuators is also needed by aftermarket service providers.

The Speciality Equipment Manufacturers Association (SEMA) commented that they would support a provision that would require OEMs to provide general information on each significant component of the OBD system. SEMA further commented that a description of typical values under operating conditions is feasible and that it is reasonable for OEMs to consolidate this type of information in a generic manner to assist technicians in identifying a malfunctioning component without having to purchase an OEM specific scan tool. SEMA also commented that they support the availability of system diagrams and basic descriptions of OBD system monitoring.

BMW submitted written comments supporting the comments of the Alliance and AIAM on requiring OBD system operational information. BMW commented that they would support provisions that mirror those proposed by the California Air Resources Board (CARB) which require OEMs to make available general descriptions of OBD system information rather than the specific list proposed by EPA.

A consortium of aftermarket groups (the "Aftermarket Consortium") stated its support for a provision that would require OEMs to make available OBD system operational information,

regardless of whether or not they currently make this information available to their dealerships. They further commented that the Clean Air Act does not limit the information which must be provided to that which is furnished to dealers. The Associations also commented that this type of information needs to be made available to the aftermarket from all OEMs to ensure the proper diagnosis and repair of OBD equipped vehicles. Finally, the Associations commented that independents often fix used part or replace a malfunctioning part with a used or rebuilt part in making repairs. In doing so, they may have to adjust the functioning of such parts to meet OBD parameters. Therefore, OBD system information is needed in these circumstances.

The Service Technicians Society (STS) commented in their written submission that generic drive cycles, component operating ranges and system logic flow diagrams are important pieces of information for the emissions repair process. STS further commented that current availability of this type of information varies among OEMs and is not easily available in some cases. Without this type of information, technicians must use their best judgement, or sometimes even guess at the appropriate solution, which increases the time and cost of repairs. STS is concerned that access to this level of information is necessary to avoid customer frustration and to increase the perception of automotive aftermarket service providers as competent professionals.

In their written submission, ETI commented that OEM repair information can sometimes be inadequate despite the claims of the Alliance and AIAM. Many OEM repair procedures call for the temporary substitution of a known good part which can only be purchased from a dealer. However, simply replacing the part may not solve the problem. If it is an electrical part, the dealer may not take it back. ETI states that this type of repair information is not adequate by anybody's standards. Therefore, the aftermarket technician must have the information requested in order to conduct pinpoint tests and determine whether the part in question is working without using the substitution process.

EPA Decision: EPA agrees with comments that it is appropriate to more specifically define the "OBD Generic Drive Cycle" information. Therefore, EPA is finalizing a provision that requires OEMs to make available monitor-specific drive cycles for all major OBD monitors as equipped

including, but not limited to catalyst, catalyst heater, oxygen sensor, oxygen sensor heater, evaporative system, exhaust gas re-circulation (EGR) secondary air, and a/c system. Additionally, for diesel vehicles under 14,000 pounds GVWR which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (*i.e.*, non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the OEM shall make available monitor-specific drive cycles for these monitors. We will also finalize a provision that will require any OEMs who develop generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles to also make these available in full-text on OEM Web sites.

With regard to OBD system operational information, EPA disagrees with the Alliance and AIAM comments that EPA has not substantiated that some OEMs do not make adequate information available to the aftermarket. While EPA agrees that it would seem that OEMs have a "huge motivation" to ensure that sufficient information is available to both dealership and aftermarket technicians, we believe that there are numerous examples of information gaps of which the OEMs are aware. Aside from the analysis of OEM service manuals conducted by EPA which can be found in the docket (Air Docket A-2000-49, item II-B-01, "Memo from Shannon Elliot to Holly Pugliese and Arvon Mitcham—Analysis of OEM Service Manuals", March 10, 2000), EPA has participated in numerous meetings and conferences with aftermarket service providers and OEMs for discussions solely focused on acknowledged gaps in OEM information. Additionally, sources such as the International Automotive Technicians Network (iATN) and the Service Technicians Society (STS) have provided numerous examples of both dealership and aftermarket technician difficulties in finding enough information to service some particular OEM makes and models. A compilation of some of the complaints that have been documented can be found in EPA Air Docket A-2000-49, Item #IV-H-03.

EPA also disagrees that it does not have the authority under the Clean Air Act to compel the distribution of relevant service information. EPA agrees with the comments submitted by MEMA, *et al.* that the Clean Air Act does not limit the information that must be provided to that which is made available to dealerships. While it is clear that under section 202(m)(5), the

aftermarket should *at a minimum* have access to the same information as dealerships, section 202(m)(5) does not preclude EPA from requiring OEMs to provide additional information to be made available to both dealerships and the aftermarket. Nothing in section 202(m)(5) of the Clean Air Act makes reference to limiting information availability to that which is made available to dealerships. On the contrary, section 202(m)(5) requires OEMs to provide "any and all" information needed to use the OBD system and "such other information including instructions for making emission related diagnosis and repairs," including at a minimum all information given to dealerships. EPA is instructed by section 202(m)(5) to promulgate regulations requiring OEMs to provide such information. EPA has broad authority to require all information needed to use the OBD system and make emission related diagnosis and repairs, including requiring OEMs to provide specific information needed for emission related diagnosis and repairs.

Regarding the comments submitted by the Alliance and AIAM and BMW that the proposal goes beyond EPA's authority and may very well require the release of proprietary OEM calibrations, EPA appreciates the concerns of these commenters. It was not EPA's intent to require any information that would be considered a trade secret or would jeopardize the integrity of the OBD system. We believed that the general language in the proposal regarding what would be considered OBD system operational information would be sufficient to express the level of information EPA believes is needed to be made available from all OEMs without jeopardizing OEM proprietary information. EPA also agrees with the comments of the Alliance, AIAM, and BMW that the OBD system descriptors required by the service information regulations finalized by the California Air Resources Board provide a sufficient list of the types of OBD diagnostic information needed to service and repair OBD-equipped vehicles and is in essence exactly the level of information EPA was seeking to be made available by using the term "OBD system operational information." Therefore, EPA will finalize a list of required information to parallel the list finalized by CARB in their September 2002 Final Rule. OEMs shall make available for purchase to all covered persons, a general description of each OBD 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 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.

(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 parameters for specific vehicles that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles.

(G) A listing of 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 re-circulation (EGR), secondary air, and air conditioning system. Additionally, for diesel vehicles under 14,000 pounds GVWR which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (*i.e.*, non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the OEM shall make available monitor-specific generic drive cycles for these monitors. Any OEM who develops generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles shall also make these available in full-text on OEM Web sites.

(H) 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.

EPA believes that this list meets the concerns of aftermarket service providers that not all OEMs provided complete information for the service and repair of emissions related problems. As discussed in the NPRM, we believe that a greater number of OEMs are providing this very information to both their franchised dealerships as well as the aftermarket which provides a strong indication that EPA should incorporate a more specific list of what EPA believes should be made available by all OEMs. We believe

that the comprehensive list being finalized in today's action will ensure that more complete emissions-related information is available from all OEMs.

We are also finalizing a provision that requires the development of the information described above by the OEM even if this information does not already exist in some form for its dealerships. EPA is making this distinction to reiterate our position that there is a need for an increased consistency in the level of information made available across all OEMs. In the past, we have generally agreed that whatever information is made available to OEM dealerships provided an adequate basis to determine what information should be made available to the aftermarket. However, experience in implementing the 1995 regulations has underscored the need for EPA to be more specific in its definition of emissions-related information as discussed in great detail above. This increased specificity of our definitions ultimately requires that all of the information required by these regulations be made available, regardless of whether or not it is currently made available to dealerships. In other words, OEMs may not make the claim that they do not have to make certain information required by this regulation available to the aftermarket because they do not even make it available to dealerships.

B. Anti-Theft Information

Summary of Proposal: EPA proposed that information needed to start the vehicle when the vehicle is equipped with an anti-theft or similar system that disables the engine also be made available to the aftermarket.

Summary of Comments: The Alliance and AIAM commented that they recognize the need to be able to start a vehicle after an emissions-related repair, but they have some concern with making this information available to aftermarket service providers in the manner proposed by EPA. The Alliance and AIAM also acknowledge that aftermarket service providers already have the ability to access this capability for a majority of their member companies. The Alliance and AIAM explained that some OEM anti-theft systems require a serial data message to be sent to the vehicle on the OBD data link (SAE J1962) that contains a PIN (personal identification number) or key that is unique to each specific vehicle. This vehicle specific code may be obtained from information that should be retained by the vehicle owner or may be obtained from an assistance center controlled by the OEM. In other words,

the aftermarket currently has access to anti-theft reinitialization in some form for many OEMs. The Alliance and AIAM commented that it is not clear from EPA's proposal if OEMs would be required to make these special codes available on the OEM Web sites. Rather, the Alliance and AIAM assumed that OEM Web sites would be required to inform aftermarket service providers on how to obtain the code from the OEM. The Alliance and AIAM further commented that enhanced data stream information that will be available to scan tool manufacturers would allow an aftermarket scan tool to complete the re-initialization process with the additional information that would be available from the OEM.

The Alliance and AIAM also commented on the impact that the proposed release of anti-theft information could have on other requirements that OEMs are subject to in the U.S. and internationally. For some OEMs, implementing EPA's proposed anti-theft provision would require redesigning the vehicle's anti-theft system in order to stay in compliance with requirements in place by other Agencies. Because of these factors, the Alliance and AIAM recommended that EPA finalize a phase-in for this requirement with full implementation in 2007. The Alliance and AIAM further comment that many OEMs already comply with the proposed requirement and that allowing sufficient lead time for a minority of OEMs will allow for sufficient time to implement changes without jeopardizing vehicle security or compliance with other regulations. The Alliance and AIAM additionally commented that EPA and CARB should work closely with the National Highway Traffic Safety Administration (NHTSA) in determining whether a component or system qualifies as a vehicle security system and whether providing this information would circumvent the anti-theft system.

The Automotive Service Association (ASA) also provided comments on the release of anti-theft information. ASA supports finalizing a provision that would make this information available to aftermarket service providers, but recommends that EPA be more specific about how aftermarket service providers can obtain anti-theft information and the timeliness of receiving the information. ASA commented that, if the information is protected to the degree that aftermarket service providers cannot immediately obtain the information, EPA should finalize a provision that requires the OEMs to make this information available on the

same day it is requested. ASA submitted similar comments in their written submission.

APRA and AERA also commented that repairers and rebuilders of the OBD computer itself also need specific information which will allow them to re-initialize a computer when it is being repaired after being removed from the vehicle. APRA and AERA commented that the proposed rule is not specific enough and that EPA should extend the anti-theft provisions to starting the computer if it has been removed from the vehicle.

The National Automobile Dealers Association (NADA) commented that EPA lacks the authority to require "unfettered dissemination" of anti-theft information. NADA further commented that EPA did not consult with the National Highway Traffic Safety Administration, the U.S. Customs Service, the National Insurance Crime Bureau or other vehicle theft experts before drafting the proposal. NADA recommends that EPA develop a process that is very carefully controlled to address the restarting of vehicles disabled by anti-theft systems during emissions-related repairs.

The Automotive Aftermarket Industry Association (AAIA) and the Automotive Warehouse Distributors Association (AWDA) commented that they support a provision that will mandate OEMs to provide aftermarket service providers with the ability to reinitialize anti-theft systems after the completion of emissions-related repairs. AAIA and AWDA further commented that the proposal does not go far enough. AAIA and AWDA are particularly concerned about rebuilt ECUs that must be removed from the vehicle that are sent off-site for the rebuilding process. AAIA and AWDA comment that OEMs should enter into licensing agreements with the few companies who rebuild ECUs to ensure that they have the codes or "black boxes" which contain the codes.

One independent aftermarket service provider commented that the mandated release of anti-theft information to aftermarket service providers would be detrimental to the driving public. Rather than making anti-theft information directly available to the aftermarket, Mr. Porcaro further commented that OEMs should be required to inform aftermarket service providers which vehicle systems are impacted by anti-theft systems. To the extent that those vehicle systems cannot be reprogrammed without anti-theft system information, OEMs should be required to have their respective dealer networks available for quick and inexpensive reprogramming.

SEMA commented that anti-theft information is necessary to validate repairs, allow for product development and to verify the remanufacture of an ECU or similar electronic components. SEMA further commented that this information must be available not only through the scan tool but also via the OEM Web sites. SEMA agrees with other commenters that security issues related to the release of this information is an important concern. However, SEMA commented that vehicle owners must have the ability to provide anti-theft information to an independent facility and the independent facility must have the ability to use the information obtained from, or authorized by, the owner to complete the repair. SEMA believes that this combination should minimize concerns about the inappropriate release of anti-theft system information to the aftermarket.

Nissan of North America commented that the release of anti-theft information would seriously compromise the intent of the anti-theft system and opposes any provision that would require this information to be made available to aftermarket service providers.

BMW commented that they generally agree with comments submitted by the Alliance and AIAM on this issue. BMW commented that they prefer not to see any provision at all that would require the release of this information, but that if EPA decides to move forward, the Agency should allow for sufficient lead time for implementation. BMW further commented that there appears to be some discrepancy between the proposed preamble language and proposed regulatory language. Specifically, BMW is concerned that the preamble refers to information and tools needed to start the vehicle after the completion of an emissions-related repair, whereas the proposed regulatory language makes no mention of tools. This is of particular concern to BMW because BMW does not have "information" in the traditional sense that would allow an aftermarket service provider to re-set the security system after an emissions-related repair for 1993–2003 model year vehicles. Rather, BMW has the functionality built into their OEM-specific scan tools that allow for re-initialization of the (ECU) which, for BMW, only occurs when the ECU is replaced. BMW also commented that EPA should adopt the anti-theft language proposed by CARB.

Volkswagen of America (VW) submitted written comments requesting that anti-theft provisions be removed from the final rulemaking. VW commented that this issue should be discussed in a separate effort that would allow for a thorough discussion with all

interested parties and agencies to ensure that such a requirement would not have a negative impact on OEM efforts to improve vehicle security.

ETI commented that OEMs have known for many years that security could not be used as an excuse to require the vehicle to be towed to the dealership for a special process and thus deny the aftermarket from participating in computer replacement or reprogramming. ETI further commented that there is no need to delay this requirement until 2007, as suggested by at least one OEM. ETI commented that OEMs have had ample time to design vehicle ignition systems that can be started after a computer change or reprogramming event.

American Honda commented that vehicle theft is of particular concern to Honda given that Honda vehicles have a particularly high theft rate in the U.S. and abroad. Honda has committed significant resources to reducing vehicle theft for its vehicles and recent data indicates that the theft rate for Honda vehicles has been significantly reduced since immobilizer systems have been installed on Honda vehicles. Honda attributes the success of their immobilizer systems to the considerable control process they incorporate to protect the proprietary information with their licensed dealers. Honda is concerned that they would not be able to put in place similar controls for the aftermarket and would be left with no course of action against third parties if security agreements were violated. Honda commented that they have been in contact with law enforcement agencies, the insurance industry and the National Highway Traffic Safety Administration to gather their expert opinions on the matter and encourages EPA to do the same.

American Honda commented that because of the issues outlined above, they strongly oppose the proposed requirement to release information to the aftermarket on how to obtain information to reinitialize Honda vehicles, other than instructing the customer to return to a licensed Honda dealer. The Aftermarket Consortium reiterated its support for making anti-theft and re-initialization procedures available to the aftermarket, including those companies that rebuild ECUs. They state that without the ability to initialize the system, the aftermarket service provider cannot complete the repair of the vehicle. Currently 900,000 rebuilt ECUs are sold annually. If rebuilding facilities are not able to initialize the anti-theft system, they will not be able to provide these services. They state that they are well aware of

the concerns regarding the integrity of the anti-theft system. However, many companies allow the initialization of the system using a "black box" that avoids the need to reveal anti-theft codes.

The Service Technicians Society (STS) submitted written comments in support of making anti-theft and re-initialization procedures and information available to aftermarket service providers, so that the motorist can drive away from the service facility after an OBD check or repair is made.

The Highway Loss Data Institute (HLDI) submitted written comments voicing their opposition to the release of any information related to anti-theft systems to the aftermarket. HLDI commented that their organization has monitored the effectiveness of anti-theft devices for many years. Their data indicates a significant decrease in automobile theft with the installation of vehicle anti-theft systems. HLDI further commented that the release of this information to the aftermarket would seriously compromise the effectiveness of anti-theft systems. HLDI is concerned that it would be difficult to confine the release of the information only to the aftermarket and the release of this information would inevitably increase access to people involved in vehicle theft. HLDI is also concerned about the premium discounts some insurance providers make available to vehicle owners. HLDI commented that insurers would be forced to reassess the appropriateness of these discounts if OEMs must publish the codes and other information necessary to reinitialize an anti-theft system. Finally, HLDI commented that EPA should rescind any provision that requires OEMs to make available anti-theft information available to the aftermarket.

Written comments were received by the Advocates for Highway and Auto Safety (Advocates) after the close of the August 27, 2001 comment period. In their comments, the Advocates expressed concern for any provision that would require the release of anti-theft information. In particular, the Advocates are concerned about the posting of anti-theft system codes and other sensitive information on the World Wide Web. Even if the information can be encrypted, this will not ensure that the information will not fall into the hands of vehicle thieves. The Advocates recommend that EPA refrain from adopting the portions of the proposal that would require the publication of anti-theft codes and information by the OEMs. Further, the Advocates comment that EPA consult with NHTSA and other interested parties regarding other means to achieve

EPA's goal. The Advocates commented that one option might be to require that anti-theft and emission-related functions be separately configured so that the maintenance and repair of one system does not affect the other.

EPA Decision: As stated in the preamble to the proposal, EPA is sensitive to finalizing any provision that would jeopardize the intent of any OEM anti-theft system. However, we also believe that vehicle design on at least some OEM vehicles would prevent an aftermarket technician from completing an emissions-related repair without the ability to re-initialize a vehicle's anti-theft system. As we noted in the proposal, re-initialization is critical to the ability of an aftermarket technician to complete an emission-related repair. A vehicle that cannot be driven away from the shop has not been fully repaired. Therefore, this information and/or the ability to perform this service must be made available to the aftermarket in a timely and cost effective manner. In order to allow OEMs maximum protection of the integrity of their anti-theft systems, EPA will finalize the following provisions for the availability of anti-theft system information. OEMs shall make available computer or anti-theft system initialization information necessary for the proper installation or repair of on-board computers or the repair or replacement of any other emission-related part on motor vehicles that employ integral vehicle security systems. OEMs are not required to make this information available on the OEM's Web site unless they choose to do so. However, the OEM's Web site shall contain information on obtaining the information and/or the ability to perform re-initialization.

Beginning with the 2008 model year, we require that all OEM systems will be designed in such a way that no special tools or processes will be necessary to perform re-initialization. In other words, EPA expects that the re-initialization of vehicles can be completed with generic aftermarket tools, a pass-through device, or an inexpensive OEM-specific cable. This model year cut-off is consistent with the requirement to complete the phase-in of the SAE J2284-3 CAN requirement as discussed in section 18 of this document. We believe it is reasonable to allow for additional leadtime through the 2007 model year to allow those OEMs who need additional time to reconfigure their vehicle systems in such a way that the release of anti-theft information can be accomplished without posing a threat to the integrity of the system and without special tools or an OEM-specific tool. Therefore, an

OEM may request, by 1 month following the effective date of the final rule Administrator approval for an alternative means to re-initialize vehicles for some or all model years through the 2007 model year.

The Administrator shall approve the request only after all of the following conditions have been met:

(A) The OEM must demonstrate that the availability of such information to aftermarket service providers would significantly increase the risk of vehicle theft.

(B) The OEM must make available a reasonable alternative means to install computers, or to otherwise repair or replace an emission-related part.

(C) Any alternative means proposed by an OEM cannot require aftermarket technicians to return to an OEM franchised dealership to obtain information or special tools to re-initialize the anti-theft system.

(D) Any alternative means proposed by an OEM must be available to aftermarket technicians at a minimal cost.

(E) Any alternative must be available to aftermarket technicians within twenty-four hours of the initial request.

(F) Any alternative must not require the purchase of a special tool or tools to complete this repair. For example, an OEM who intends to request approval to require the purchase of their OEM-specific tool or some other OEM-specific special tool as their alternate solution through model year 2007 must allow the aftermarket to lease that tool for a short period of time, at appropriate minimal cost, rather than requiring the outright purchase of the tool.

(G) In lieu of leasing their OEM-specific tool to meet this requirement, an OEM may also choose to release the necessary information to equipment and tool manufacturers for incorporation into aftermarket scan tools. Any OEM choosing this option must release the information to equipment and tool manufacturers within 60 days of Administrator approval. OEMs may also choose to comply with this requirement using SAE J2534 for some or all model years through model year 2007.

We believe that it is unreasonable and directly contrary to the intent of section 202(m)(5) to require the aftermarket to purchase numerous and costly tools that they would not have otherwise purchased to perform a relatively infrequent repair. In fact, it is for the same reasons that, as discussed below, EPA is requiring that all OEMs make available generic and enhanced scan tool information to equipment and tool companies. Requiring the purchase of expensive tools for such minimal and

rare repairs would be an especially egregious abuse of the OEMs' monopoly of information in order to charge unreasonable costs.

Regarding the requirement that OEMs provide the information directly to aftermarket technicians, not through dealerships, several OEMs have commented that it is appropriate to limit the information to dealerships because of the greater security concerns associated with providing the information to the aftermarket. These arguments are directly contrary to the letter and intent of section 202 (m)(5). One of the key purposes of that section was to prevent OEMs from giving their dealerships substantial competitive advantages against their competitors in the aftermarket repair industry by giving repair information only to dealerships, leaving aftermarket technicians at the mercy of their competitors. OEMs have not shown that providing a method for aftermarket technicians to re-initialize vehicles will inherently provide less security than providing re-initialization information to their dealerships; nor have they shown that any speculative problems justify the considerable competitive disadvantage caused by providing this information solely to their dealers. Our regulations do not require this information to be provided on the OEM's Web site and allow OEMs to provide the information enabling re-initialization to aftermarket technicians in a secure manner. The Alliance/AIAM comments note that many OEMs already provide such information directly to the aftermarket.

C. Accessibility and Performance Requirements of OEM Web Sites

Summary of Proposal: We proposed that each OEM Web site allow end-users to search its database of emission-related service information by various topics. We proposed that the topics include, but not be limited to, model, model year, key words, phrases, diagnostic procedures, scheduled maintenance and vehicle identification number (VIN). Additionally, we proposed that OEMs must provide information to allow for readily identifying the latest vehicle calibration. Further, while the VIN may be offered as one means of conducting a search, we proposed that OEMs may not require the use of a VIN to initially access the data base. We also proposed that the use of proprietary hardware, software, viewers, browsers and formats for accessing information be prohibited. In other words, OEMs must develop their service information, and provide access to it, in such a way that it can be viewed using software such as Adobe Acrobat Reader

that is readily available to Internet users. The OEM's Home Page must be accessible to anyone and contain instructions on how to access the information. Instructions should include, but not be limited to, minimum hardware and non-proprietary software needed by the end-user and associated costs for accessing and purchasing information. Finally, we proposed that OEMs not limit the modem speed by which aftermarket service providers can access OEM Web sites.

We also proposed performance and reporting requirements for OEM Web sites. We proposed that OEMs submit to the Administrator on an annual basis a report that provides detailed, monthly measurements of the OEM's Web site. Each OEM report is to be submitted to the Administrator beginning one year after the required launch date of OEMs' Web sites (*i.e.*, one year and 6 months after the final rule is issued), or upon request by the Administrator.

Summary of Comments: The Alliance and AIAM, and several individual OEMs commented on EPA's proposal to allow searching of OEM Web sites by VIN. They commented that requiring a Web site to be searchable by VIN will inflate the cost of information without providing a meaningful improvement in accessibility. They further commented that service technicians customarily search for information by make, model and year and that searchability by VIN is only useful for some items such as service campaigns and vehicle calibrations (for some OEMs). The Alliance and AIAM recommend deleting this requirement from the final rule.

APRA and AERA commented that they do not see a need for access by VIN to the OEM Web sites. A technician who knows the VIN of the vehicle they are repairing also knows the model and model year and can access the information in that manner.

Mr. Jerry Truglia of ATTS commented that EPA should require several options for OEM Web site searchability criteria. Mr. Truglia commented that all OEM Web sites should have uniform and consistent search engines. In addition, all OEM Web sites should be searchable by VIN, vehicle system, generic OBD part name, and P0 and P1 diagnostic trouble codes.

The Speciality Equipment Manufacturers Association (SEMA) commented that they strongly support the proposed requirement that service information be searchable by VIN. SEMA commented that this type of search is necessary because many repairs such as service campaigns, field fixes and running changes are

implemented on the basis of VIN. SEMA also commented that EPA should consider a requirement for a VIN-based history of the services and repairs performed on a given vehicle to help ensure the proper repair procedure is used since the content/condition of a given vehicle will be more accurately known. VIN-based histories would also be of value to consumers by giving them more information about an in-use vehicle's history at the time of purchase.

The Aftermarket Consortium submitted comments suggesting that a search by VIN on OEM Web sites is not necessary.

BMW commented that EPA's proposal to require that information be searchable by model year poses a problem for BMW because of how they organize their service information. BMW organizes its service information by combining body series, engines, body types, and transmissions. Currently, any technician searching for BMW information could not locate information for the vehicle in question by simply searching for a model year. BMW proposes that they would provide a link to a cross-reference document that describes the various combinations and the model years they pertain to in order to assist technicians who are not familiar with the structure of BMW vehicles and service information.

STS commented that searching for information by VIN is a more accurate way to search for information on OEM Web sites, but that it can not be the only way. STS commented that, to the extent a search by VIN is required, it should be restricted to the least amount of numbers that would not jeopardize rights to privacy of the vehicle owner.

With regard to EPA's proposal on performance and Reporting Requirements, the Alliance and AIAM and several individual OEMs commented that they believe that the detailed reporting provisions in the proposal should be eliminated and replaced with a general reporting requirement for an annual report on the performance of a Web site with a specified deadline. The Alliance and AIAM further commented that any details of the annual reports should be addressed separately from the regulations in the form of EPA's manufacturer guidance letter. The Alliance and AIAM expressed particular concern of the list of 17 criteria as being too specific given the rate of change in Internet activities. They commented that it is likely that EPA would want to change the content of the annual reports over time to reflect advances in Internet technology and other issues. To include specifics in the final regulation would

put the burden on EPA to change the regulations frequently which is not practical given the complexities of the regulatory process. The Alliance and AIAM further recommend that EPA schedule a public workshop to discuss the criteria that should be reported to EPA before issuing any guidance to ensure that all parties have input.

ASA commented at the public hearing that generally, the OEM Web sites must be required to meet some minimum standards for performance to ensure that independent repair shops are not subject to low quality Web sites from a time or quality perspective. Web sites that are not user friendly will not be utilized by the aftermarket, therefore undermining the intent of the regulation to improve the accessibility of information to the aftermarket.

NADA commented at the July 25, 2001 public hearing that they support EPA's proposal to shift to delivery of service information via the Internet. However, NADA commented that it is not necessary for EPA to micro manage OEM Web sites. In particular, NADA commented that EPA did not need to establish requirements for how information on the sites is searched or indexed, whether the information can be downloaded and how, what, or who the OEMs can charge for the information.

The Automotive Aftermarket Industry Association (AAIA) and the Automotive Warehouse Distributors Association (AWDA) commented at the July 25, 2001 public hearing that they support a provision that will require OEMs to submit annual reports that provide detailed monthly measurements of OEM Web sites. AAIA and AWDA expressed concern that EPA has not established standards by which the reports can be judged and without such standards, EPA will not be able to take enforcement action against an OEM for a Web site that is not accessible to independents. AAIA and AWDA commented that EPA should adopt criteria similar to that being considered by CARB for performance standards that include such parameters as ensuring that OEM Web servers have sufficient capacity to allow ready access by all covered persons.

The Aftermarket Consortium submitted comments that they support requirements that OEMs submit annual reports regarding Web site performance and that this information will assist the Administrator in measuring the effectiveness of OEM Web sites. The Aftermarket Consortium also commented that they are concerned about the reporting parameters proposed by EPA because they do not include

some minimum performance expectation and will not provide sufficient guidance to ensure OEM compliance. The Aftermarket Consortium recommended that EPA adopt the performance requirements proposed by CARB.

ASA commented that reporting requirements should include an analysis of how information transfers have worked for third party providers.

EPA Decision: Based on the comments received, there is no obvious agreement on the need to require a search by VIN on OEM Web sites. When proposing this particular provision, we believed that requiring a search by VIN on the OEM sites would not be overly burdensome for the OEMs and would be of some benefit to aftermarket service providers. After further consideration, it now appears that requiring OEMs to design sites that require information to be searchable by VIN would require considerable resources, but would not considerably improve the ability of the aftermarket to find information on OEM Web sites. The California Air Resources Board has not finalized a similar provision for these same reasons. Therefore, EPA will not require the VIN as a search method for OEM Web sites.

In response to BMW's comment about searching by model year, EPA agrees that there may be a few OEMs who do not delineate their service information by model year. We agree that it is reasonable to adopt BMW's proposal that would allow for OEMs who do not have a model year delineation to allow searchability by some alternate means such as body series. However, EPA also agrees that any OEM who does not use model year should include some documentation that allows for a cross-reference to model year for those aftermarket service providers who may not be familiar with the structure of OEM vehicle classification.

With regard to OEM Web site performance and reporting requirements, EPA believes that the performance of OEM Web sites is paramount to the availability of the information. The reporting parameters proposed by EPA were intended to ensure that EPA would have sufficient information to evaluate the performance of OEM Web sites to ultimately ensure that the information required by these regulations is truly available. While EPA believes that the parameters proposed would achieve this goal, we agree with commenters that finalizing reporting requirements as proposed would not allow EPA maximum flexibility for making adjustments to the provisions to allow for technology advances and implementation experience. We also

agree that a reasonable alternative is to finalize some minimum reporting requirements as part of the regulation that must be measured by the OEMs and provide additional guidance after discussions with all interested parties as the OEM Web sites are reviewed. OEMs must provide annual reports containing monthly measurements of the following parameters:

(A) Total successful requests (measured in number of files including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, *i.e.* electronic images such as wiring or other diagrams or pictures). This is defined as the total successful request counts of all the files which have been requested, including pages, graphics, etc.

(B) Total failed requests (measured in number of files). This is defined as the total failed request counts of all the files which were requested but failed because they could not be found or were read-protected. This includes pages, graphics, etc.

(C) Average data transferred per day (measured by bytes). This is defined as average amount of data transferred per day from one place to another.

(D) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests each day of the week, over the time period given at the beginning of the report.

(E) Daily report (measured in number of files/pages by the day of the month). This is defined as how many requests there were in each day of a specific month.

(F) Browser Summary (measured in number of files/pages by browser type, *i.e.*, Netscape, Internet Explorer). This is defined as the versions of a browser by vendor.

(G) Any other information deemed necessary by the Administrator to determine the adequacy of an OEM Web site.

EPA will work with OEMs and issue further guidance regarding requirements to outline a consistent format and timing of submission.

OEMs may request Administrator approval to report on parameters other than those described above if the OEM can demonstrate that those alternate parameters will provide sufficient and similar information for EPA to effectively evaluate the OEM Web site.

In addition, several commenters suggested that EPA should harmonize with CARB and at a minimum, adopt the performance criteria finalized in their service information rule. EPA agrees and will therefore finalize a provision that requires OEMs to launch

Web sites that meet the performance criteria described below:

(A) OEM Web sites shall possess sufficient server capacity to allow ready access by all users and have sufficient downloading capacity to assure that all users may obtain needed information without undue delay;

(B) Broken Web links shall be corrected or deleted weekly.

(C) Web site navigation does not require a user to return to the OEM home page or a search engine in order to access a different portion of the site.

Performance reports will be submitted to the Administrator annually and within 30 days of the end of the calendar year, or upon request by the Administrator. EPA will issue additional direction in the form of official manufacturer guidance to further specify the process for submitting reports to the Administrator.

D. Structure and Cost of OEM Web Sites

Summary of Proposal: We proposed a tiered approach for access to OEM Web sites. First, we proposed that OEMs provide short term access for a set price. We proposed that OEMs would set up a short time frame of approximately 24 hours whereby an aftermarket service provider would be able to access that OEM's Web site, search for the piece of information they need, and purchase, download and/or print it for a set fee. We proposed that a reasonable fee for short term access can be as little as \$0, but should be no greater than \$20.

We also proposed that OEMs provide mid term access for a set price. Under this scenario, aftermarket service providers would be able to access the OEM Web site for a 30 day time frame and purchase, download and/or print information under this option for a set fee. EPA believes that a reasonable fee for mid term access can be as little as \$0, but no greater than \$300.

We proposed that OEMs provide long term access for a set price. Under this scenario, aftermarket service providers would have access to the OEM Web site for a 365 day time frame, including the ability to purchase, download and/or print the information for a set fee. EPA believes that a reasonable fee for long term access can be as little as \$0, but no greater than \$2500.

Summary of Comments: The Alliance and AIAM, and several individual OEMs commented that they understand the goal of this proposed provision to meet the needs of a variety of Web site users. However, the Alliance and AIAM further commented that the OEMs should be allowed some flexibility in designing their Web sites. The Alliance and AIAM proposed that additional

language be added to the final rule that would allow an OEM to request approval from the Administrator for an alternative method by which the information can be accessed. The Alliance and AIAM commented that this flexibility would allow for innovation without jeopardizing the intent of the proposed tiered approach.

The Alliance and AIAM also commented at the public hearing on the cost caps proposed by EPA for each of the tiers. They commented that the proposal goes well beyond specifying factors to be considered in terms of pricing for Internet access and exceeds the authority of the Agency under the Clean Air Act. The Alliance and AIAM provided extensive legal discourse to support its assertion that ultimately EPA's authority to require the disclosure of service information is tertiary behind EPA's primary responsibility to set emissions standards, and secondary responsibility to require OBD systems. The Alliance and AIAM further commented that even if EPA has authority to compel information disclosure, EPA's proposal to limit OEM compensation for disclosed information would undermine the Clean Air Act. They stated that if OEMs are unable to obtain reasonable, flexible compensation for the information they provide, they will have less incentive and diminished ability to provide the information to end users in a timely, detailed, and user-friendly manner. The Alliance and AIAM go on to comment that section 202(m)(5) does not mention prices or price-setting authority for EPA. Finally, the Alliance and AIAM commented that EPA has set its proposed caps with very little data and analysis, and therefore, they are arbitrary and capricious, even if EPA had the authority to establish price caps.

The Alliance and AIAM further commented that the proposal overlooks the fact that federal intellectual property laws protect some of the documents covered by the EPA proposal.

The Automotive Service Association (ASA) commented at the public hearing that EPA's proposed price caps were too high. ASA further commented that EPA must take into consideration the fact that aftermarket shops still need to purchase non emissions-related information as well. ASA proposed an alternate pricing structure. For short term access, ASA proposed \$1. For mid-term access, ASA proposed a \$30 maximum. For long term access, ASA proposed a \$365 maximum. ASA commented that their proposed prices were fair and reasonable and that EPA's proposal places additional cost burden on the aftermarket that must be limited

as much as possible. ASA expressed concern that if the price burden is not adequately addressed, it could be used as a tool to diminish the role of the aftermarket. The ASA submitted written comments reiterating their proposal for price caps. ASA further commented that EPA's proposed price caps do not take into consideration the additional costs that will have to be accounted for by independent shops to shift to the Internet to acquire service information. ASA asserts that many aftermarket shops will have to invest in computer equipment, Internet access, training, and possible the hiring of administrative staff. Further, ASA commented that EPA must prohibit OEMs from providing service information at a reduced cost based on participation in an OEMs parts distribution program. ASA also commented that OEMs must bear the responsibility of educating the aftermarket as to the availability and structure of their Web sites.

The Automotive Parts Rebuilders Association (APRA) and the Automotive Engine Rebuilders Association (AERA) commented at the public hearing that price is a concern to rebuilders also. They commented that they are particularly concerned with the way EPA lists the factors that should be taken into consideration when determining if information is available at a fair and reasonable price. APRA and AERA commented that in the 1995 rule, EPA lists factors that the Administrator *shall* take into consideration, whereas the proposed rule lists factors that the Administrator *may* take into consideration. APRA and AERA commented that this seemingly small change could have a significant impact on the issue of price. This slight word change could lead to an interpretation that EPA may allow, but does not require that the Administrator take these factors when determining fair and reasonable price. APRA and AERA further commented that the setting of price caps does not obviate the need for a reasonableness determination and that the proposed rule may be inviting an OEM to choose a price near the cap, even though the OEM could not otherwise justify the price. Therefore, APRA and AERA believe that EPA must be required, not merely allowed, to use the listed factors when making fair and reasonable price determinations.

Jerry Truglia of the Westchester/Putnam Chapter of the Service Technicians Society (STS) commented at the public hearing about their concern regarding what the tiered approach proposed by EPA would actually give aftermarket technicians access to on the OEM Web site. For

example, Mr. Truglia questioned if a technician purchased a 30 day access to an OEM Web site, would that technician have access to all of the OEM vehicles, or just one; would it cover all model years from 1996 on, or just one model year; would the subscription include all OEM badge names or just one. Mr. Truglia also submitted written comments proposing a different approach to aftermarket access for service information. Mr. Truglia proposed that the most effective way to ensure that all information is available to both dealers and aftermarket technicians is to include a CD or manual with the purchase of every new vehicle. In the alternate, Mr. Truglia proposed that new vehicles could be installed with microchips that could take the place of the CD or paper manual. Under either scenario, a technician could connect to the Internet to ensure that they had the latest information and/or reprogramming event. Ultimately, Mr. Truglia is concerned that OEM Web sites will not have all of their vehicles listed under their badge, that search engines will not be easy to navigate, will not have reliable connections for 24 hour access, and that proposed fees are above what repair facilities can afford.

The Automotive Aftermarket Industry Association (AAIA) and the Automotive Warehouse Distributors Association (AWDA) commented at the July 25, 2001 public hearing that the price caps proposed by EPA are too high and, if utilized by every OEM, access to service information on the Internet would not be affordable by most aftermarket shops. AAIA and AWDA further commented that it is not clear why OEMs would need to charge such high prices based on current costs for establishing and operating a Web site and the fact that its use will be spread over thousands of service facilities and franchised dealerships. AAIA and AWDA commented that the price caps proposed by EPA should be lowered significantly.

AAIA and AWDA also commented that EPA should retain the factors listed in the 1995 regulations regardless of what is finalized with regard to price caps. AAIA and AWDA further recommend that EPA modify the current factors to be consistent with those proposed by the California Air Resources Board (CARB) service information rule, particularly because CARB includes the affordability of the information to average service facilities as one of its factors for determining reasonable cost. AAIA and AWDA also reiterated that affordability of service information is a critical issue for the aftermarket and unless small and medium sized service facilities can

afford to purchase the required information and tools, the intent of the service information provision of the Clean Air Act will not be carried out.

J&J Automotive submitted written comments that it is not clear what the prices that OEMs will charge for access to information will actually cover. Similar to Mr. Truglia's comments, J&J Automotive commented that it must be made clear if access to information will be for the OEMs entire car line or just one specific model.

The Wisconsin Department of Transportation commented that EPA's proposal to require information and training at a reasonable cost represents a fair compromise between those parties that would like access to information for free and those OEMs who might attempt to limit access through unreasonably high pricing. Wisconsin DOT further commented that EPA should include aftermarket technicians and repair shops in discussion pertaining to the establishment of specific price caps in order to determine if "reasonable" is truly reasonable.

The Alliance of Automotive Service Providers (AASP) commented that the price cap for long term access to OEM Web sites will be cost prohibitive for the majority of aftermarket shops. For short term access, AASP commented that EPA should finalize a 15 day period rather than the 24 hour period originally proposed and that the fee for this short term access should be no more than \$20. The AASP further commented that they reserve the right to pass each OEM's information access charges onto their customers. AASP will also ask their members to consider assuming part of these costs in the business plans and to bill customers for the remaining portion of the access fees where feasible.

Trevor Samoil of Trevor and Joanne Automotive in Vancouver, Canada commented that accurate and reasonably priced information is the hardest tool to obtain and supports EPA's efforts to establish reasonable cost parameters for information access.

Michael Haven of MPH Automotive Services commented that, when determining reasonable price, EPA should consider the fact that the information being sought by aftermarket service providers has already been created for their dealer networks. OEMs are not being asked to create new information to meet the information needs of aftermarket shops. Mr. Haven further commented that EPA should ensure that the OEMs not be allowed to create profit centers when making information available in the aftermarket. Mr. Haven cites Volvo as an example of an OEM who is charging too much for

Web based access to information. As of this writing, Volvo is charging about \$1,700 per model per year for access to their site, which covers both emissions and non-emissions related information. Mr. Haven suggests that Hyundai, who currently allows access to their Web based service information free of charge is the model that all OEMs should be required to adhere to.

Vincent J. Porcaro commented that the price caps proposed by EPA are excessive. Mr. Porcaro further commented that it would cost an excess of \$10,000 per year to have access to Ford, GM, Chrysler and one import for one year. Mr. Porcaro commented that more reasonable price caps would be \$15 for 24 hour access, \$45 for 30 day access and \$250 for yearly access. Mr. Porcaro commented that his proposed pricing structure would be more consistent with current sources of information utilized by the aftermarket. Mr. Porcaro also commented that phrase "reasonable cost" must be revisited because the phrase has many interpretations. What is reasonable to one may not be reasonable to another and EPA must allow the aftermarket repair industry reasonable access to the needed information and tools. Mr. Porcaro commented that the ability to have the aftermarket scan tool manufacturers receive generic and enhanced information for a reasonable fee must be part of the federal certification of all vehicles for sale in the public market otherwise the information may not be released in a timely manner. Further, Mr. Porcaro states that the phrase "reasonable cost" must be revisited as this phrase has many interpretations. Further, EPA must allow the aftermarket repair industry reasonable access to the needed information and tools.

The National Automobile Dealers Association (NADA) submitted written comments that EPA has no justification, statutory or otherwise, to regulate the cost of OBD information and that any attempt to do so exceeds EPA's authority. Further, NADA commented that EPA must take into consideration the cost to OEM dealerships for the same or similar information when determining if OBD service information is being made available at a fair and reasonable price to the aftermarket and that this factor should be included in the final regulations. NADA also included in their written comments responses to a survey they conducted at dealerships to provide EPA with an idea of what dealers are paying for tools, training, and information. Lastly, NADA commented that it takes a significant investment in tools, training, and

information in order to service "high tech" vehicles and that any vehicle maintenance facility unwilling or unable to make those investments should be dissuaded, if not prohibited, from working on OBD repairs.

ETI commented that the Alliance and AIAM submitted nearly 4 pages of unsupportive comment on the issue of the cost of service information. ETI contends that this demonstrates the OEMs lack of interest in trying to provide the most information at the least cost. ETI further commented that OEMs should be concentrating more on whether their vehicles are being adequately serviced and about whether the customer is having a positive service experience. To this end, ETI commented that they do not understand why OEMs don't try to use every means possible to make sure that everyone has the required information they need.

The Aftermarket Consortium commented that, while section 202 (m)(5) of the Clean Air Act does not specifically include a reference to cost, it was evident that Congress clearly understood the importance of cost as it relates to the availability of information. They also commented that EPA also understood the importance of cost when finalizing the 1995 rule by connecting the availability of information to the ability to afford information. The industry associations also proposed that EPA adopt the criteria that the California Air Resources Board (CARB) is considering to help define the reasonable cost of service information. The industry associations also supported the comments made by AERA and APRA that the final rule should say that EPA "will" consider certain criteria when making reasonable cost determinations as to the language used in the proposed rule that EPA "may" consider certain criteria when making such determinations.

The industry associations also commented that they support EPA's tiered approach for aftermarket access to the OEM Web sites. However, they do express concern that the price caps proposed by EPA will be beyond the means of most independent service facilities. Because most shops specialize in numerous makes and models, EPA's pricing structure could mean it would cost a shop tens of thousands of dollars in annual Web access fees, and these costs don't even include tools or other information updates, or non-emissions related information. They also expressed concerns that the caps may encourage all OEMs to charge the maximum amount allowed under by the caps. Finally, they commented that EPA should lower the proposed cap limits to

take into consideration the factors outlined in their comments on this issue.

Mr. Bob Clark of Clark Automotive Systems submitted written comments suggesting that all information needed to service a vehicle should become the property of the owner of the vehicle when it is purchased. Mr. Clark commented that the meaning of "available" and "reasonably priced" service information must maintain the consumer's right to choose in a competitive market place. Mr. Clark further commented that if the OEMs are allowed to restrain trade in the automotive repair industry by claiming intellectual property rights to their information, the result will be a reduction in a consumer's choice in where their vehicle is diagnosed and serviced.

EPA Decision: On the general issue of cost, EPA has said since our initial regulation of service information availability that cost is an integral factor influencing the availability of service information. The legislative history of this provision supports the view that Congress was concerned regarding the cost of service information and did not want service information to become a profit center for OEMs. The Clean Air Act requires that service information must be made available to *any* person engaged in the repairing or servicing of motor vehicles. This includes persons who service motor vehicles at large repair facilities, as well as service personnel at the smallest gas stations; it includes facilities that specialize in servicing a single vehicle brand, as well as shops that work on multiple vehicle brands. The legislative history explains this intent:

The purpose of the amendment is to make sure that * * * the manuals, the techniques, are available to, in effect the local gas stations so that they will be more convenient for the automobile owner, that the automobile owner will not have to trek off to some dealer 30 miles away in order to be able to correct problems that have arisen with his automobile. * * * We want [manufacturers] to provide the information which will allow competition in the after market and allow small business operators to get in the repair business. 36 Cong. Rec. 3272 (1990).

We believe the Act's mandate will have been met only if the emission control service information is available to persons in all of these situations.

While the Clean Air Act does not specify the price that OEMs should be allowed to charge for service information, it does appear that Congress intended that the price of obtaining this information should not be so high that it significantly affects

competition between OEM franchised dealers and independent service stations. The legislative history states:

There again, when we require them to promptly provide information needed, we recognize that we do not want to require somebody to provide a lot of expensive manuals absolutely for free, but we do not want the kind of charges that make this a profit center. 36 Cong. Rec. 3272 (1990).

Since independent service stations may repair vehicles manufactured by many different companies, they may be competitively disadvantaged if the cost of each manufacturer's service information were large. There can be little question that information provided only at exorbitant prices cannot be said to be "available" to the purchasers.

We continue to be concerned that OEMs will establish pricing structures that will essentially render their information unavailable to the aftermarket. In the 1995 rule, we established factors that should be taken into consideration when determining if the prices being charged were fair and reasonable. We received comments from the Alliance, AIAM, AATA, AWDA, AERA, and APRA and others suggesting that EPA include the factors we established for the 1995 rulemaking when making general determinations about fair and reasonable cost. Additionally, we received comments suggesting that EPA should also include the list established by CARB in their September 2002 final rule which includes factors that are directed at determining fair and reasonable cost. There is extensive overlap between the EPA list and the factors finalized by CARB and we agree that items on both of these lists should be considered when determining fair and reasonable cost and will include them in this final rule.

EPA will therefore include certain of the factors from CARB's list to supplement EPA's preexisting list. In particular, in addition to the factors that EPA may already take into account under EPA's preexisting list, we will include: The cost to the OEM's franchised dealerships for similar information obtained from OEMs; the ability of the aftermarket technicians and shops to afford the information; and the extent to which the information is used, including the number of users, and frequency, duration and volume of use.

Regarding the comments that the proposal notes the factors EPA "may" consider, rather than "shall" consider, EPA believes that given the differing types of information required by the regulation and the numerous factors listed, it is appropriate that there be

flexibility in determining what factors are appropriate in each given situation.

On the issue of price caps proposed for access to OEM Web sites, EPA received a significant amount of comments, most of which were against the proposal. Some OEMs questioned our authority to set price caps and several members of the aftermarket claimed that the caps were too high. While we believe that EPA has the authority to set price caps and that the caps proposed by EPA would provide us with a more objective measure of OEM compliance with our reasonable cost expectations, we will not finalize any price caps with this regulation. However, EPA believes it is necessary to thoroughly evaluate the pricing structure of each OEM Web site to ensure that information is being made available at a fair and reasonable price, and that OEMs are not pricing Web access in such a way that precludes its availability to a significant portion of the aftermarket. Therefore, in order to evaluate an OEM's pricing structure, we are establishing a process whereby each OEM must obtain EPA approval of its pricing structure. OEMs must submit a request to EPA that sets forth a detailed description of the pricing structure as well as amounts for access to their Web sites. In addition, OEMs must provide support for the position that the pricing structure and amounts are fair and reasonable by addressing the criteria listed in sections 86.094-38, paragraph (g)(7)(i) and 86.1808-03, paragraph (f)(7)(i) of the regulatory language for this final rule. Some of these criteria are further clarified below.

Regarding the net cost to the OEM franchised dealerships for similar information obtained from OEMs, less any discounts, rebates, or other incentive programs, EPA expects that OEMs will supply detailed information on the true costs that are incurred by their franchised dealerships to access information.

Regarding the ability of aftermarket technicians or shops to afford the information, EPA will consider the ability of the smallest service facilities as well as larger repair facilities. This includes facilities that either specialize in single or multiple vehicle brands, or that work on all brands.

Regarding the extent to which the information is used, this includes the number of users, and frequency, duration, and volume of use. EPA expects that as larger numbers of the aftermarket begin accessing OEM Web sites, the pricing and amounts for accessing the sites per customer should decrease.

A complete description of the approval process can be found in sections 86.094-38, paragraph (g)(7)(ii) and 86.1808-03, paragraph (f)(7)(ii) of the regulatory language for this final rule. Subsequent to the approval of the OEM Web site pricing structure and amounts, OEMs are required to notify the Administrator of any increase in price of twenty percent or more (accounting for inflation), including a justification based on the criteria for reasonable cost as established by this regulation.

Regarding the comments on the proposed tiering structure, EPA believes that it is necessary for the aftermarket to be able to access OEM information in a variety of ways given the varying nature of how the aftermarket services vehicles. However, we also agree with OEMs that it is reasonable for them to have some flexibility in how they design these tiers in order to ensure end-user satisfaction and to provide the OEMs with the ability to minimize the administrative burden in implementing a tiered approach. Therefore, EPA will finalize the following provisions for the tiered access of OEM Web sites.

OEMs shall allow short-term, mid-term, and long-term access to their Web sites. Short term access shall be for a period of 24-72 hours. Mid-term access shall be for a period of 30 days. Long-term access shall be for a period of 365 days. Access includes the ability to view and print the information. Based on comments received about potential copyright violations, EPA will not require OEMs to make their information available for downloading on to an end-user's computer system.

In addition, for each of the tiers, OEMs are required to make their entire site accessible for the respective period of time and price. In other words, an OEM may not limit any or all of the tiers to just one make or one model.

Regarding the Alliance and AIAM's legal discussion, EPA disagrees with the assertion that the Agency's responsibility for ensuring service information is provided to service providers is subsidiary to its other responsibilities under the Act. Section 202(m)(5) contains no language indicating that EPA's responsibilities and powers under that part of the Act are somehow limited by its other general responsibilities under the Act. Regarding the effect of these regulations or OEMs' incentives to provide timely, detailed user-friendly service information, Congress did not mandate that EPA create an incentive program to motivate OEMs, but instead Congress mandated that EPA promulgate regulations that bind their actions.

OEMs are required to provide the information in this regulation in a timely user-friendly manner. Though EPA understands that OEMs will be more motivated to do this if they receive more money, the requirements in these regulations are not dependent on OEMs' motivation. In order to accomplish Congress's intent to ensure service providers receive the information needed to make emission-related diagnosis, service and repair, the desire of OEMs to be compensated for providing such information must be tempered by the need for service and repair personnel to be able to afford such information. The regulations therefore allow OEMs to charge for this information, but the charges must be fair and reasonable.

Regarding their claim that these regulations may interfere with copyright protections, the cases cited deal only with a state law and, in an irrelevant context, an executive order. They do not deal with a federal statute that on its face requires the disclosure of information that may be copyrighted. It is clear from the statutory language and the legislative history that these materials (e.g. service manuals), which are generally available to at least some members of the public, are among the types of materials that Congress intended to be provided by this legislation. See Statements of Sens. Chafee and Gore, 136 Cong. Rec. 5391-92 (S3272) (March 27, 1990). It is worth noting that Congress cited specifically to the "trade secret protections" of section 208(c) but did not refer to the very different protections in copyright law.

Regarding the Alliance and AIAM comments on EPA's ability to set prices, though EPA does not agree with these comments, as discussed above, EPA is not finalizing its proposal to set specific prices for service information, though EPA retains its preexisting authority to ensure that costs be reasonable.

EPA does not agree with the comments submitted by Mr. Haven that the aftermarket should have free access to OEM information, though EPA does agree that some current prices appear exorbitant. The legislative history on the issue is quite clear that Congress understood that there were some costs incurred by the OEMs for making information available that were recoverable, but that this needed to be balanced with any attempts by the OEMs to either price information in such a way that it was not available or to turn aftermarket access to information into a profit center.

In response to Mr. Truglia and Mr. Clark's comments that the most effective way to ensure that all information is

available to both dealers and aftermarket technicians is to include a CD or manual with the purchase of every new vehicle, EPA believes that, while there is some merit to this proposal, it would not necessarily solve aftermarket concerns to the availability and affordability of information. First, OEM service information is subject to amendment and the addition of new information (e.g. technical service bulletins) which would mean that any information included with the purchase of a new vehicle would be out of date or incomplete which will still put the aftermarket in a position of somehow working with an OEM to determine if they have the latest information.

Additionally, a vehicle is likely to change ownership several times during its useful life and there is no guarantee that the information that came with the vehicle will remain with the vehicle. Again, the aftermarket would be in a position of having to obtain this information directly from the OEM

In response to Mr. Truglia's proposal that new vehicles could be installed with microchips that could take the place of the CD or paper manual, while there may be some advantage to this approach in the future, EPA is not in a position to finalize such a provision without further research and debate on the feasibility of such an approach and its costs and benefits to the service and repair of vehicles.

E. Availability of Enhanced Information for Scan Tools

Summary of Proposal: We proposed to require an increased level of enhanced information to be made available to equipment and tool companies to develop more functional aftermarket diagnostic scan tools.

We proposed that within 30 days of publication of the final rule OEMs make available to companies who develop aftermarket scan tools all generic and enhanced service information for MY 1996 and later needed to manufacture diagnostic tools that can be used by aftermarket technicians to diagnose, service and repair emission-related components and systems. Enhanced service and repair information is defined as information which is specific for an original equipment OEM's brand of tools and equipment. Generic service and repair information is defined as information which is not specific for an original equipment OEM's brand of tools and equipment.

In addition, we proposed that OEMs provide information that describes which interfaces or combination of interfaces, from each of the categories in the sections above are used on each

vehicle. This may be organized by application, system or a combination of both provided the information identifies which interfaces are used on each vehicle's system/model/model year. OEMs may use the New Product Information Guideline (NPIG) created by the Equipment and Tool Institute (ETI) as a guide to help meet this requirement or provide a substitute matrix approved by the Administrator.

We proposed that enhanced information includes, but is not limited to:

(a) All serial data stream information
(b) Bi-directional controls (e.g., operation of actuators, initiation of self-checks, etc.) Including any safety precautions necessary prior to invoking the controls.

(c) Descriptions of non-proprietary logic and performance limits and specifications used in the OEM specific tools to perform diagnostic routines or sub-routines (E.g., injector or cylinder balance tests, etc.)

(d) The physical hardware requirements for reprogramming events or tools (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.);

(e) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.);

(f) Information on the application physical interface (API) or layers (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination);

(g) vehicle application information or any other related service information such as special pins and voltages for reprogramming events or additional vehicle connectors that require enablement and specifications for the enablement.

Summary of Comments: STS commented that they agree that EPA's proposed description of enhanced diagnostic information is sufficient.

The Alliance and AIAM commented that EPA proposed that data stream information also be made available to equipment and tool companies. In particular, the Alliance and AIAM commented that EPA's definition of data stream information includes the words "information * * * for use by other modules * * * to conduct normal vehicle operation or for use by diagnostic tools." The Alliance and AIAM do not take issue with making available data stream information required for diagnostic purposes. However, they do take issue with

making available data stream information related to normal vehicle operation. The Alliance and AIAM further commented that they do make this information available when it is directly related to diagnostics, but there are instances where scaling of this information may be different and the data may be combined differently with other data values. The Alliance and AIAM request that EPA clarify that only data stream information required for diagnostic purposes, and not the redundant data stream information used for normal operation, be made available to equipment and tool companies.

BMW commented that they interpret section (g)(12) as requiring OEMs to provide generic scan tool companies information needed to enable scan tools. BMW commented that it was in agreement in principle with these sections but needed clarification. In particular, BMW comments that sections (g)(11) and (g)(12) of the proposed regulatory language appear to be contradictory. In section (g)(11) of the proposed regulatory language, EPA proposed that OEMs make available reprogramming procedures, including "information on application physical interface (API) or layers (*i.e.*, processing algorithms or software design descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination)". In addition section (g)(11)(vii)(A), (B), and (D) specify additional reprogramming-related information. However, section (g)(12)(ii) seems to intend that OEMs provide information for generic scan tools to work with 1996 and later model year vehicles, and proposes that the same list of information be released for both reprogramming and generic scan tools. BMW commented that scan tool companies only need data stream information to enable capture and readout of generic and enhanced fault codes and reprogramming information is not necessary for developing generic diagnostic scan tools.

BMW is opposed to the release of any information to equipment and tool companies that would allow them to incorporate reprogramming capabilities because BMW considers this information to be proprietary information and BMW sees an extensive need for verification of these tools. In addition, BMW is able to implement the SAE J2534 specification for its 1999–2003 model year vehicles and can comply with the required release of information to the equipment and tool companies the information described above for the extra cable to allow for reprogramming of their vehicles. BMW

commented that they do not have the resources to support tool and equipment companies who face challenges in developing these reprogramming tools.

BMW also made recommendations as to how section (g)(11) and (g)(12) should be rewritten to more clearly address what BMW believes EPA intends to accomplish.

EPA Decision: In response to BMW's comments, several clarifying points should be made. In paragraphs (g)(11) and (g)(12) of the proposed regulatory language, EPA proposed two distinct provisions to deal with two distinct issues. In paragraph (g)(11), we proposed that OEMs make available certain information to equipment and scan tool companies to allow for them to incorporate the reprogramming capability into aftermarket scan tools prior to the implementation of the pass-through reprogramming requirement (*i.e.* SAE J2534) in order to cover 1996–2002 model year vehicles. In paragraph (g)(12), we proposed that OEMs make an increased level of enhanced diagnostic information available to aftermarket to companies. In the 1995 regulations, EPA finalized a rather generic provision that required OEMs to make available enhanced diagnostic information to the equipment and tool companies for incorporation into aftermarket tools. Other than specifically noting that emissions-related data stream information be included, we left the interpretation up to the OEM as to what was considered enhanced diagnostic information. We found that the few OEMs who chose the option of releasing information to equipment and tool companies (rather than make their OEM specific tool for sale which was the other option available to OEMs and the one that most chose to meet the scan tool requirement) had different interpretations of what was considered "enhanced diagnostic information." As a result, there was a fair amount of difference among the OEMs in the information made available to equipment and tool companies. In addition to the variety of interpretations of "enhanced diagnostic information", our experience in implementing the 1995 rule highlighted that there are very specific pieces of information needed by equipment and tool companies to ensure that aftermarket tools perform to their maximum capacity. As a result, equipment and tool companies were not able to develop aftermarket tools that adequately performed the enhanced diagnostic functions found in OEM tools. Therefore, we proposed more specific provisions for two important reasons. First, we believe it is necessary to increase the consistency of

information that is released to aftermarket tool companies across OEMs to address some of the gaps we believe currently exist. Second, we believe a higher level of information is needed by aftermarket scan tools to increase the functionality of the aftermarket scan tools that are heavily relied upon by independent technicians. EPA is not finalizing a provision that will require OEMs to release the information that was proposed in the NPRM unless they cannot use SAE J2534 methods on 1996 to 2003 model year vehicles. Therefore, we believe BMW's concerns about section (g)(11) of the proposed regulatory language have been addressed.

With regard to the release of information to equipment and tool companies, we agree with BMW that there does appear to be some confusion in the lists of information that EPA proposed for both the reprogramming and generic and enhanced scan tool information sections in the regulatory language. In fact, the lists as proposed in these sections of the regulatory language contain some factual and typographical errors which are corrected here and in the final regulatory language. In sections (g)(12)(ii) and (f)(12)(ii) of the proposed regulatory language ("Reprogramming Information"), we included language that would require OEMs to make available to equipment and tool companies the necessary calibrations via CD-ROM, diskette, or the Internet (item E). This particular piece of information is one that would be purchased by an aftermarket service provider to complete a reprogramming event and therefore belongs in the "Reprogramming Information" section of the final regulatory language, which can be found in sections (g)(12) and (f)(12) of the regulatory language. Ultimately, we believe that the information we proposed to be made available is necessary for equipment and tool manufacturers to develop aftermarket scan tools with the same sophisticated functionality as is provided to dealerships using an OEM scan tool. In addition, we believe that the list of information we are finalizing today is not proprietary in nature and therefore should not concern OEMs. Therefore, we will finalize a provision that requires the OEMs to make available to equipment and tool companies the following information.

(A) The physical hardware requirements for data communication (*e.g.* system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.)

(B) ECU data communication (*e.g.* serial data protocols, transmission speed

or baud rate, bit timing requirements, etc).

(C) Information on the application physical interface (API) or layers. (*i.e.*, processing algorithms or software design descriptions for procedures such as connection, initialization, and termination)

(D) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

VI. What Are the Administrative Requirements for This Final Rule?

A. EO 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

An Information Collection Request (ICR) document has been prepared by EPA (ICR No.0783.45). EPA has established a public docket for this ICR under Docket ID A-2000-49, which is available for viewing at the EPA Air Docket (*see* the **ADDRESSES** section for more information).

Respondent burden has been estimated by consulting with private companies who perform Web site performance measurement for a wide variety of clients. EPA estimates that each manufacturer can purchase software or services from private companies that can perform Web site performance activities for approximately \$1000. EPA estimates that each manufacturer will spend approximately \$250 per month to gather and maintain the information proposed to be collected for a total of \$3000 per year per manufacturer. EPA estimates that the 45 potential respondents will incur approximately 100 burden hours per year.

Under Title II of the Clean Air Act, (42 U.S.C. 7521 *et seq.*), EPA is charged with requiring the manufacturers of vehicles and engines to make available emissions-related repair information to aftermarket service providers. To improve timely access to this information, EPA is requiring that vehicle and engine manufacturers provide access to the required emissions-related information in full-text via the World Wide Web. To ensure compliance with these statutes, EPA is requiring that manufacturers measure the performance of their Web sites as outlined in Section II.B(3)(b) of this preamble and report this information to EPA in electronic format on an annual basis. EPA will review the information to determine that the manufacturers subject to the proposed Web site requirements have developed Web sites with sufficient infrastructure to support potentially thousands of aftermarket service providers at any given time.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed

in 40 CFR part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule would not have a significant impact on a substantial number of small entities because the regulated entities impacted by this rulemaking would not be considered small entities.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have

meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA believes this final rule contains no federal mandates for state, local, or tribal governments. Nor does this rule have federal mandates that may result in the expenditures of \$100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA. Nothing in the final rule would significantly or uniquely affect small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes, as specified in Executive Order 13175. The requirements proposed by this action impact private sector businesses, particularly the automotive and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this final rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by E.O. 12866.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule incorporates by reference technical standards adopted

by the Society of Automotive Engineers (SAE). We believe these standards are well accepted by industry.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 6, 2003.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 30, 2003.

Christine Todd Whitman,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 1. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

■ 2. Section 86.1(b)(2) table is amended by adding the following entries to the end of the table.

§ 86.1 Reference materials.

* * * * *
(b) * * *
(2) * * *

| Document No. and name | 40 CFR part 86 reference |
|---|--|
| * * * | * * |
| SAE Recommended Practice J1930 (Revised, May, 1998), Electrical/ Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms. | 86.096-38; 86.004-38; 86.007-38; 86.1808-01; 86.1808-07. |

| Document No. and name | 40 CFR part 86 reference |
|--|--|
| SAE Recommended Practice J1979 (Revised, September, 1997), E/E Diagnostic Test Modes. | 86.096–38; 86.004–38; 86.007–38; 86.1808–01; 86.1808–07. |
| SAE Recommended Practice J2284–3 (May, 2001), High Speed CAN (HSC) for Vehicle Applications at 500 KBPS. | 86.096–38; 86.004–38; 86.007–38; 86.1808–01; 86.1808–07. |
| SAE Recommended Practice J2534 (February, 2002), Recommended Practice for Pass-Thru Vehicle Programming. | 86.096–38; 86.004–38; 86.007–38; 86.1808–01; 86.1808–07. |

* * * * *

■ 3. Section 86.094–38 is amended by adding paragraph (g)(21) to read as follows:

§ 86.094–38 Maintenance instructions.

* * * * *

(g) * * *

(21) Beginning December 24, 2003, rather than meeting the requirements of paragraphs (g)(5) through (g)(9) of this section, a manufacturer must upload the required information in full text on its manufacturer-specific Web site as required in § 86.096–38 (g)(3), except that for models not covered by § 86.096–38 but covered by § 86.094–38, a manufacturer may upload an index of the required information on its Web site consistent with paragraphs (g)(5), (g)(6), and (g)(9) of this section. Manufacturers who upload an index must allow parties identified in paragraph (g)(1) of this section to obtain information listed in the index either directly from the Web site, or from an alternate source whose telephone number is listed on the manufacturer Web site, or from a Web site hyperlinked to the manufacturer Web site. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that all requested information, whether requested directly from the manufacturer or the manufacturer's information distributors shall be distributed within one regular business day of receiving the order. Items that are less than 20 pages (e.g. technical service bulletins) shall be faxed, if requested, to

the requestor and manufacturers are required to deliver the information overnight if requested and paid for by the ordering party.

■ 4–6. Section 86.096–38 is added to read as follows:

§ 86.096–38 Maintenance instructions.

This section includes text that specifies requirements that differ from those specified in § 86.087–38. Where a paragraph in § 86.087–38 is identical and applicable to § 86.096–38, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.087–38.”

(a) through (f) [Reserved]. For guidance see § 86.087–38.

(g) Emission control diagnostic service information:

(1) Manufacturers are subject to the provisions of this paragraph (g) beginning in the 1996 model year for manufacturers of light-duty vehicles and light-duty trucks, and beginning in the 2005 model year for manufacturers of heavy-duty vehicles and heavy-duty engines weighing 14,000 pounds gross vehicle weight (GVW) and less that are subject to the OBD requirements of this part.

(2) *General requirements.* (i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnoses and repairs, including but not limited to service manuals, technical service bulletins, recall service information, bi-directional control information, and training information, unless such information is protected by section 208(c) of the Act as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(ii) *Definitions.* The following definitions apply for this paragraph (g):

(A) Aftermarket service provider means any individual or business engaged in the diagnosis, service, and repair of a motor vehicle or engine, who is not directly affiliated with a manufacturer or manufacturer-franchised dealership.

(B) Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that

temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

(C) Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or more communication wires. The information is broadcast over the communication wires for use by the OBD system to gather information on emissions-related components or systems and from other vehicle modules that may impact emissions, including but not limited to systems such as chassis or transmission. For the purposes of this section, data stream information does not include engine calibration-related information, or any data stream information from systems or modules that do not impact emissions.

(D) Emissions-related information means any information related to the diagnosis, service, and repair of emissions-related components.

Emissions-related information includes, but is not limited to, information regarding any system, component or part of a vehicle that controls emissions and any system, component and/or part associated with the powertrain system, including, but not limited to:

(1) The engine, the fuel system and ignition system,

(2) Information for any system, component or part that is likely to impact emissions, such as transmission systems, and any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions-related problem; and

(3) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emissions-related failure found through the inspection and maintenance program after such finding has been communicated to the affected manufacturer(s).

(E) Emissions-related training information means any information-related training or instruction for the purpose of the diagnosis, service, and repair of emissions-related components.

(F) Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment. This includes computer or anti-theft system initialization information necessary for the

completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(G) Equipment and tool company means a registered automotive equipment or software company either public or private that is engaged in, or plans to engage in, the manufacture of automotive scan tool reprogramming equipment or software.

(H) Generic service and repair information means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

(I) Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others). This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(J) Intermediary means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to aftermarket service providers.

(K) Manufacturer-franchised dealership means any service provider with which a manufacturer has a direct business relationship.

(L) Third-party information provider means any individual or entity, other than an original equipment manufacturer, who consolidates manufacturer service information and makes this information available to aftermarket service providers.

(M) Third-party training provider means any individual or entity, other than an original equipment manufacturer who develops and/or delivers instructional and educational material for automotive training courses.

(3) *Information dissemination.* By December 24, 2003, each manufacturer shall provide or cause to be provided to the persons specified in paragraph (g)(2)(i) of this section and to any other interested parties a manufacturer-specific World Wide Web site containing the information specified in paragraph (g)(2)(i) of this section for 1996 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (g)(12) through (g)(16) of this section. Upon request and approval of the Administrator, manufacturers who can demonstrate significant hardship in complying with this provision within four months after the effective date may request an additional six months lead time to meet

this requirement. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (g)(5) of this section.

(ii) Be updated at the same time as manufacturer-franchised dealership World Wide Web sites;

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer Web site.

(iv) Provide Short-Term (24 to 72 hours), Mid-Term (30 day period), and Long-Term (365 day period) Web site subscription options to any person specified in paragraph (g)(2)(i) of this section whereby the user will be able to access the site, search for the information, and purchase, view and print the information at a fair and reasonable cost as specified in paragraph (g)(7) of this section for each of the subscription options. In addition, for each of the subscription options, manufacturers are required to make their entire site accessible for the respective period of time and price. In other words, a manufacturer may not limit any or all of the subscription options to just one make or one model.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, etc., while allowing ready identification of the latest vehicle calibration. Manufacturers who do not use model year to classify their vehicles in their service information may use an alternate vehicle delineation such as body series. Any manufacturer utilizing this flexibility shall create a cross-reference to the corresponding model year and provide this cross-reference on the manufacturer Web site home page.

(vi) Provide accessibility using common, readily available software and shall not require the use of software, hardware, viewers, or browsers that are not readily available to the general public. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from government Web sites and automotive-related Web sites.

(viii) Allow access to the manufacturer Web site with no limits on the modem speed by which aftermarket service providers or other interested

parties can connect to the manufacturer Web site.

(ix) Possess sufficient server capacity to allow ready access by all users and have sufficient capacity to assure that all users may obtain needed information without undue delay.

(x) Correct or delete broken Web links on a weekly basis.

(xi) Allow for Web site navigation that does not require a user to return to the manufacturer home page or a search engine in order to access a different portion of the site.

(xii) Allow users to print out any and all of the materials required to be made available on the manufacturer Web site including the ability to print it at the user's location.

(4) *Small volume provisions for information dissemination.* (i)

Manufacturers with annual sales of less than 5,000 vehicles shall have until June 28, 2004 to launch their individual Web sites as required by paragraph (g)(3) of this section.

(ii) Manufacturers with annual sales of less than 1,000 vehicles may, in lieu of meeting the requirement of paragraph (g)(3) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained by the persons specified in paragraph (g)(2)(i) of this section.

(5) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites. This excludes indirect information specified in paragraphs (g)(6) and (g)(12) through (g)(16) of this section. To the extent that this information does not already exist in some form for their manufacturer franchised dealerships, manufacturers are required to develop and make available the information required by this section to both their manufacturer franchised dealerships and the aftermarket. The required information includes, but is not limited to:

(i) Manuals, including subsystem and component manuals developed by a manufacturer's third party supplier that are made available to manufacturer franchised dealerships, technical service bulletins (TSBs), recall service information, diagrams, charts, and training materials. Manuals and other such service information from third party suppliers are not required to be made available in full-text on manufacturer Web sites as described in paragraph (g)(3) of this section. Rather, manufacturers must make available on the manufacturer Web site as required by paragraph (g)(3) of this section an index of the relevant information and

instructions on how to order such third party information. In the alternative, a manufacturer can create a link from its Web site to the Web site(s) of the third party supplier.

(ii) OBD system information which includes, but is not limited to, 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 diagnostic trouble codes associated with each monitor;

(C) A description of the typical enabling conditions (either generic or monitor-specific) for each monitor (if equipped) 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. In addition, manufacturers shall list all 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 (EGR), secondary air, and air conditioning system. Additionally, for diesel vehicles under 14,000 pounds, GVWR which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (*i.e.*, non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the manufacturer shall make available monitor-specific drive cycles. Any manufacturer who develops generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles shall also make these available in full-text on manufacturer Web sites;

(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 parameters for specific vehicles that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles;

(G) 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, "EE Diagnostic Test Modes" (Incorporated by reference, *see* § 86.1).

(H) Algorithms, look-up tables, or any values associated with look-up tables are not required to be made available.

(iii) Any information regarding any system, component, or part of a vehicle monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL);

(iv) Any information on other systems that can effect the emission system within a multiplexed system (including how information is sent between emission-related system modules and other modules on a multiplexed bus);

(v) Manufacturer-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides, and/or repair procedures associated with these manufacturer-specific DTCs; and

(vi) Information regarding how to obtain the information needed to perform reinitialization of any vehicle computer or anti-theft system following an emissions-related repair.

(6) *Anti-theft system initialization information.* Computer or anti-theft system initialization information and/or related tools necessary for the proper installation of on-board computers or necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems or the repair or replacement of any other emission-related part shall be made available at a fair and reasonable cost to the persons specified in paragraph (g)(2)(i) of this section.

(i) Except as provided under paragraph (g)(6)(ii) of this section, manufacturers must make this information available to persons specified in paragraph (g)(2)(i) of this section, such that such persons will not need any special tools or manufacturer-specific scan tools to perform the initialization. Manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer-specific cables.

(ii) A manufacturer may request Administrator approval for an alternative means to re-initialize vehicles for some or all model year vehicles through the 2007 model year by 1 month following the effective date of the final rule. The Administrator shall approve the request only after the following conditions have been met:

(A) The manufacturer must demonstrate that the availability of such information to aftermarket service providers would significantly increase the risk of vehicle theft.

(B) The manufacturer must make available a reasonable alternative means to install or repair computers, or to otherwise repair or replace an emission-related part.

(C) Any alternative means proposed by a manufacturer cannot require aftermarket technicians to use a manufacturer franchised dealership to obtain information or special tools to re-initialize the anti-theft system. All information must come directly from the manufacturer or a single manufacturer-specified designee.

(D) Any alternative means proposed by a manufacturer must be available to aftermarket technicians at a fair and reasonable price.

(E) Any alternative must be available to aftermarket technicians within twenty-four hours of the initial request.

(F) Any alternative must not require the purchase of a special tool or tools, including manufacturer-specific tools, to complete this repair. Alternatives may include lease of such tools, but only for appropriately minimal cost.

(G) In lieu of leasing their manufacturer-specific tool to meet this requirement, a manufacturer may also release the necessary information to equipment and tool manufacturers for incorporation into aftermarket scan tools. Any manufacturer choosing this option must release the information to equipment and tool manufacturers within 60 days of Administrator approval. Manufacturers may also comply with this requirement using SAE J2534 for some or all model years through model year 2007.

(7) *Cost of required information.* (i) All information required to be made available by this section shall be made available at a fair and reasonable price. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the following:

(A) The net cost to the manufacturer-franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(B) The cost to the 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 manufacturers for similar information.

(D) The price charged by manufacturers for similar information prior to the launch of manufacturer Web sites.

(E) The ability of aftermarket technicians or shops 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.

(H) Inflation.

(ii) By August 25, 2003, each manufacturer shall submit to the Administrator a request for approval of their pricing structure for their Web sites and amounts to be charged for the information required to be made available under paragraphs (g)(3) and (g)(5) of this section. Subsequent to the approval of the manufacturer Web site pricing structure, manufacturers shall notify the Administrator upon the increase in price of any one or all of the subscription options of 20 percent or more above the previously-approved price, taking inflation into account.

(A) The manufacturer shall submit a request to the Administrator that sets forth a detailed description of the pricing structure and amounts, and support for the position that the pricing structure and amounts are fair and reasonable by addressing, at a minimum, each of the factors specified in paragraph (g)(7)(i) of this section.

(B) The Administrator will act upon the request within 180 days following receipt of a complete request or following receipt of any additional information requested by the Administrator.

(C) The Administrator may decide not to approve, or to withdraw approval for a manufacturer's pricing structure and amounts based on a conclusion that this pricing structure and/or amounts are not, or are no longer, fair and reasonable, by sending written notice to the manufacturer explaining the basis for this decision.

(D) In the case of a decision by the Administrator not to approve or to withdraw approval, the manufacturer shall within three months following notice of this decision, obtain Administrator approval for a revised pricing structure and amounts by following the approval process described in this paragraph (g)(7)(ii).

(8) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of these regulations and section 202(m)(5) of the Clean Air Act.

(9) *Third-party information providers.* By December 24, 2003, manufacturers shall, for model year 2004 and later vehicles and engines, make available to third-party information providers as defined in paragraph (g)(2)(ii) of this section with whom they engage in licensing or business arrangements;

(i) The required emissions-related information as specified in paragraph (g)(5) of this section either:

(A) Directly in electronic format such as diskette or CD-ROM using non-proprietary software, in English; or

(B) Indirectly via a Web site other than that required by paragraph (g)(3) of this section;

(ii) For any manufacturer who utilizes an automated process in their manufacturer-specific scan tool for diagnostic fault trees, the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iii) Manufacturers can satisfy the requirement of paragraph (g)(9)(ii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(iv) Manufacturers are not responsible for the accuracy of the information distributed by third parties. However, where manufacturers charge information intermediaries for information, whether through licensing agreements or other arrangements, manufacturers are responsible for inaccuracies contained in the information they provide to third-party information providers.

(10) *Required emissions-related training information.* By December 24, 2003, for emissions-related training information, manufacturers shall:

(i) Video tape or otherwise duplicate and make available for sale on manufacturer Web sites within 30 days after transmission any emissions-related training courses provided to manufacturer franchised dealerships via the Internet or satellite transmission;

(ii) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 1994 and newer vehicles. For model years subsequent to 2003, the required information must be made available for purchase within 3 months of model introduction and then must be made available at the same time it is made available to manufacturer franchised dealerships, whichever is earlier. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site. All of the items available must be shipped within 24 hours of the order being placed and are to be made available at a fair and reasonable price as described in paragraph (g)(7) of this section. Manufacturers unable to meet the 24 hour shipping requirement under circumstances where orders exceed

supply and additional time is needed by the distributor to reproduce the item being ordered, may exceed the 24 hour shipping requirement, but in no instance can take longer than 14 days to ship the item.

(iii) Provide access to third-party training providers as defined in paragraph (g)(2)(ii) of this section all emission-related training courses transmitted via satellite or Internet offered to their manufacturer franchised dealerships. Manufacturers may not charge unreasonable up-front fees to third-party training providers for this access, but may require a royalty, percentage, or other arranged fee based on per-use enrollment/subscription basis. Manufacturers may take reasonable steps to protect any copyrighted information and are not required to provide this information to parties that do not agree to such steps.

(11) *Timeliness and maintenance of information dissemination.* (i) General Requirements. Subsequent to the initial launch of the manufacturer's Web site, manufacturers must make the information required under paragraph (g)(5) of this section available on their Web site within six months of model introduction, or at the same time it is made available to manufacturer franchised dealerships, whichever is earlier. After this six-month period, the information must be available and updated on the manufacturer Web site at the same time that the updated information is made available to manufacturer franchised dealerships, except as otherwise specified in this section.

(ii) *Archived information.* Beginning with the 1996 model year, manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (g)(5) of this section for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived information on the manufacturer Web site and how it can be obtained by interested parties. Manufacturers shall index their available information with a title that adequately describes the contents of the document to which it refers. Manufacturers may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the manufacturer Web site. In the alternative, manufacturers shall list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also

provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that all information, including information that is distributed through information distributors, is provided within one regular business day of receiving the order. Items that are less than 20 pages (e.g. technical service bulletins) shall be faxed, if requested, to the requestor and manufacturers are required to deliver the information overnight if requested and paid for by the ordering party. Archived information must be made available on demand and at a fair and reasonable price.

(12) *Reprogramming information.* (i) For model years 1996 and later, manufacturers shall make available to the persons specified in paragraph (g)(2)(i) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of its choice at the same time they are made available to manufacturer franchised dealerships. This requirement takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(ii) For model years 1996 and later manufacturers shall provide persons specified in paragraph (g)(2)(i) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued. This requirement takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(iii) For all 2004 and later OBD vehicles equipped with reprogramming capability, manufacturers shall comply with SAE J2534 (Incorporated by reference, see § 86.1). Any manufacturer who cannot comply with SAE J2534 in model year 2004 may request one year additional lead time from the Administrator.

(iv) For model years 2004 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems as specified in SAE J2534 (Incorporated by reference, see § 86.1).

(v) For model years prior to 2004, manufacturers may use SAE J2534 as

described above, provided they make available to the aftermarket any additional required hardware (i.e. cables). Manufacturers may not require the purchase or use of a manufacturer-specific scan tool to receive or use this additional hardware. Manufacturers must also make available the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. Manufacturers must also make available to equipment and tool companies any information needed to develop aftermarket equivalents of the manufacturer-specific hardware.

(vi) Manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions. The requirement to make hardware available and to release the information to equipment and tool companies takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(vii) Manufacturers who cannot comply with paragraphs (g)(12)(v) and (g)(12)(vi) of this section shall make available to equipment and tool companies by September 25, 2003 the following information necessary for reprogramming the Electronic Control Unit (ECU):

(A) The physical hardware requirements for reprogramming events or tools (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.).

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.).

(C) Information on the application physical interface (API) or layers (descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination).

(D) Vehicle application information or any other related service information such as special pins and voltages for reprogramming events or additional vehicle connectors that require enablement and specifications for the enablement.

(E) Information that describes what interfaces or combinations of interfaces are used to deliver calibrations from database media (e.g. PC using CDROM to the reprogramming device e.g. scan tool or black box).

(viii) A manufacturer can propose an alternative to the requirements of paragraph (g)(12)(vii) of this section for

how aftermarket service providers can reprogram an ECU. The Administrator will approve this alternative if the manufacturer demonstrates all of the following:

(A) That it cannot comply with paragraph (g)(12)(v) of this section for the vehicles subject to the alternative plan;

(B) That a very small percentage of its vehicles in model years prior to 2004 cannot be reprogrammed with the provisions described in paragraph (g)(12)(v) of this section, or that releasing the information to tool companies would likely not result in this information being incorporated into aftermarket tools; and

(C) That aftermarket service providers will be able to reprogram promptly at a reasonable cost.

(ix) In meeting the requirements of paragraphs (g)(12)(v) through (g)(12)(vii) of this section, manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions.

(13) *Generic and enhanced information for scan tools.* By September 25, 2003, manufacturers shall make available to equipment and tool companies all generic and enhanced service information including bi-directional control and data stream information as defined in paragraph (g)(2)(ii) of this section. This requirement applies for 1996 and later model year vehicles.

(i) The information required by paragraph (g)(13) of this section shall be provided electronically using common document formats to equipment and tool companies with whom they have appropriate licensing, contractual, and/or confidentiality arrangements. To the extent that a central repository for this information (e.g. the TEK-NET library developed by the Equipment and Tool Institute) is used to warehouse this information, the Administrator shall have free unrestricted access. In addition, information required in paragraph (g)(13) of this section shall be made available to equipment and tool companies who are not otherwise members of any central repository and shall have access if the non-members have arranged for the appropriate licensing, contractual and/or confidentiality arrangements with the manufacturer and/or a central repository.

(ii) In addition to the generic and enhanced information defined in paragraph (g)(2)(ii) of this section, manufacturers shall also make available

the following information necessary for developing generic diagnostic scan tools:

(A) The physical hardware requirements for data communication (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.),

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(C) Information on the application physical interface (API) or layers. (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, and termination),

(D) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

(iii) Any manufacturer who utilizes an automated process in its manufacturer-specific scan tool for diagnostic fault trees shall make available to equipment and tool companies the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iv) Manufacturers can satisfy the requirement of paragraph (g)(13)(iii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(14) *Availability of manufacturer-specific scan tools.* Manufacturers shall make available for sale to the persons specified in paragraph (g)(2)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third party of its choice. Factors for determining fair and reasonable cost include, but are not limited to:

(i) The net cost to the manufacturer's franchised dealerships for similar tools obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(ii) The cost to the manufacturer for preparing and distributing the tools, excluding any research and development costs;

(iii) The price charged by other manufacturers of similar sizes for similar tools;

(iv) The capabilities and functionality of the manufacturer tool;

(v) The means by which the tools are distributed;

(vi) Inflation.

(vii) The ability of aftermarket technicians and shops to afford the tools.

(15) *Changing content of manufacturer-specific scan tools.*

Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (g)(2)(i) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer specific tool. Any manufacturer who wishes to implement this option must request approval from the Administrator prior to the introduction of the tool into commerce.

(16) *Special tools.* (i) Manufacturers who have developed special tools to extinguish the malfunction indicator light (MIL) for Model Years 1994 through 2003 shall make available the necessary information to equipment and tool companies to design a comparable generic tool. This information shall be made available to equipment and tool companies no later than September 25, 2003.

(ii) Manufacturers are prohibited from requiring special tools to extinguish the malfunction indicator light (MIL) beginning with Model Year 2004.

(17) *Reference materials.*

Manufacturers shall conform with the following Society of Automotive Engineers (SAE) standards.

(i) For Web-based delivery of service information, manufacturers shall comply with SAE Recommended Practice J1930 (Revised, May 1998), "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" (Incorporated by reference, see § 86.1). This recommended practice standardizes various terms, abbreviations, and acronyms associated with on-board diagnostics. Manufacturers shall comply with SAE J1930 beginning with Model Year 2004.

(ii) For identification and scaling information necessary to interpret and

understand data available to a generic scan tool through "mode 6," manufacturers shall comply with SAE Recommended Practice J1979 (Revised, September, 1997), "EE Diagnostic Test Modes" (Incorporated by reference, see § 86.1). This recommended practice describes the implementation of the diagnostic test modes for emissions-related test data. Manufacturers shall comply with SAE J1979 (Incorporated by reference, see § 86.1) beginning with Model Year 2004.

(iii) For allowing ECU and equipment and tool manufacturers to satisfy the needs of multiple end users with minimum modification to a basic ECU design, manufacturers shall comply with "Recommended Practice J2284-3 (May, 2001), "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS" (Incorporated by reference, see § 86.1). SAE J2284-3 establishes standard ECU physical layer, data link layer, and media design criteria. Manufacturers may comply with SAE J2284-3 beginning with model year 2003 and shall comply with SAE J2284-3 beginning with model year 2008.

(iv) For pass-through reprogramming capabilities, manufacturers shall comply with SAE Recommended Practice J2534 (February, 2002), "Recommended Practice for Pass-Thru Vehicle Programming" (Incorporated by reference, see § 86.1). This recommended practice provides technical specifications and information that manufacturers must supply to equipment and tool companies to develop aftermarket pass-through reprogramming tools. Manufacturers shall comply with SAE J2534 beginning with model year 2004.

(18) *Reporting requirements.* Manufacturers shall provide to the Administrator reports on an annual basis within 30 days of the end of the calendar year and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. Manufacturers may request Administrator approval to report on parameters other than those described below if the manufacturer can demonstrate that those alternate parameters will provide sufficient and similar information for the Administrator to effectively evaluate the manufacturer Web site. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests (measured in number of files including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, *i.e.* electronic images such as wiring or other diagrams or pictures). This is defined as the total successful request counts of all the files which have been requested, including pages, graphics, etc.

(ii) Total failed requests (measured in number of files). This is defined as the total failed request counts of all the files which were requested but failed because they could not be found or were read-protected. This includes pages, graphics, etc.

(iii) Average data transferred per day (measured by bytes). This is defined as average amount of data transferred per day from one place to another.

(iv) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests each day of the week, over the time period given at the beginning of the report.

(v) Daily report (measured in number of files/pages by the day of the month). This is defined as how many requests there were in each day of a specific month.

(vi) Browser Summary (measured in number of files/pages by browser type, *i.e.*, Netscape, Internet Explorer). This is defined as the versions of a browser by vendor.

(vii) Any other information deemed necessary by the Administrator to determine the adequacy of a manufacturer Web site.

(19) *Prohibited acts, liability and remedies.* (i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (g), or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (g).

(ii) Any person who fails or causes the failure to comply with any provision of this paragraph (g) is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision of this paragraph (g) shall be subject to a civil penalty of not more than \$ 31,500 per day for each violation. This maximum penalty is shown for calendar year 2002. Maximum penalty limits for later years may be set higher based on the Consumer Price Index, as specified in 40 CFR part 19. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean

Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

■ 7. Section 86.004–38 is amended by revising the introductory text of this section and paragraph (g) to read as follows:

§ 86.004–38 Maintenance instructions.

This section includes text that specifies requirements that differ from those specified in § 86.096–38. Where a paragraph in § 86.096–38 is identical and applicable to § 86.004–38, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.096–38.”.

* * * * *

(g) [Reserved]. For guidance see § 86.096–38. For incorporation by reference see §§ 86.1 and 86.096–38.

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■ 8. Section 86.007–38 is amended by revising the introductory text of this section and paragraph (g) to read as follows:

§ 86.007–38 Maintenance instructions.

This section includes text that specifies requirements that differ from those specified in § 86.096–38 or § 86.004–38. Where a paragraph in § 86.096–38 or § 86.004–38 is identical and applicable to § 86.007–38, this may be indicated by specifying the corresponding paragraph and the statement “[Reserved]. For guidance see § 86.096–38., or [Reserved]. For guidance see § 86.004–38.”.

* * * * *

(g) [Reserved]. For guidance see § 86.096–38. For incorporation by reference see §§ 86.1 and 86.096–38.

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■ 9. Section 86.1801–01 is amended by revising paragraph (f) to read as follows:

§ 86.1808–01 Maintenance instructions.

* * * * *

(f) Emission control diagnostic service information:

(1) Manufacturers are subject to the provisions of this paragraph (f) beginning in the 2001 model year for manufacturers of light-duty vehicles and light-duty trucks, and beginning in the 2005 model year for manufacturers of heavy-duty vehicles and heavy-duty engines weighing 14,000 pounds gross vehicle weight (GVW) and less that are subject to the OBD requirements of this part.

(2) *General requirements.* (i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor

vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnoses and repairs, including but not limited to service manuals, technical service bulletins, recall service information, bi-directional control information, and training information, unless such information is protected by section 208(c) of the Act as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(ii) *Definitions.* The following definitions apply for this paragraph (f):

(A) Aftermarket service provider means any individual or business engaged in the diagnosis, service, and repair of a motor vehicle or engine, who is not directly affiliated with a manufacturer or manufacturer-franchised dealership.

(B) Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

(C) Data stream information means information (*i.e.*, messages and parameters) originated within the vehicle by a module or intelligent sensors (*i.e.*, a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or more communication wires. The information is broadcast over the communication wires for use by the OBD system to gather information on emissions-related components or systems and from other vehicle modules that may impact emissions, including but not limited to systems such as chassis or transmission. For the purposes of this section, data stream information does not include engine calibration related information, or any data stream information from systems or modules that do not impact emissions.

(D) Emissions-related information means any information related to the diagnosis, service, and repair of emissions-related components. Emissions-related information includes, but is not limited to, information regarding any system, component or

part of a vehicle that controls emissions and any system, component and/or part associated with the powertrain system, including, but not limited to:

(1) The engine, the fuel system and ignition system;

(2) Information for any system, component or part that is likely to impact emissions, such as transmission systems, and any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions-related problem; and

(3) Any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions-related failure found through the inspection and maintenance program after such finding has been communicated to the affected manufacturer(s).

(E) Emissions-related training information means any information related to training or instruction for the purpose of the diagnosis, service, and repair of emissions-related components.

(F) Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment. This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(G) Equipment and tool company means a registered automotive equipment or software company either public or private that is engaged in, or plans to engage in, the manufacture of automotive scan tool reprogramming equipment or software.

(H) Generic service and repair information means information which is not specific for an original equipment manufacturer's brand of tools and equipment.

(I) Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others). This includes computer or anti-theft system initialization information necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems.

(J) Intermediary means any individual or entity, other than an original equipment manufacturer, which provides service or equipment to aftermarket service providers.

(K) Manufacturer-franchised dealership means any service provider with which a manufacturer has a direct business relationship.

(L) Third-party information provider means any individual or entity, other than an original equipment manufacturer, who consolidates manufacturer service information and makes this information available to aftermarket service providers.

(M) Third-party training provider means any individual or entity, other than an original equipment manufacturer who develops and/or delivers instructional and educational material for automotive training courses.

(3) *Information dissemination.* By December 24, 2003, each manufacturer shall provide or cause to be provided to the persons specified in paragraph (f)(2)(i) of this section and to any other interested parties a manufacturer-specific World Wide Web site containing the information specified in paragraph (f)(2)(i) of this section for 2001 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (f)(12) through (f)(16) of this section. Upon request and approval of the Administrator, manufacturers who can demonstrate significant hardship in complying with this provision within four months after the effective date may request an additional six months lead time to meet this requirement. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (f)(5) of this section.

(ii) Be updated at the same time as manufacturer-franchised dealership World Wide Web sites;

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer's Web site.

(iv) Provide Short-Term (24 to 72 hours), Mid-Term (30-day period), and Long-Term (365-day period) Web site subscription options to any person specified in paragraph (f)(2)(i) of this section whereby the user will be able to access the site, search for the information, and purchase, view and print the information at a fair and reasonable cost as specified in paragraph (f)(7) of this section for each of the options. In addition, for each of the subscription options, manufacturers are required to make their entire site accessible for the respective period of time and price. In other words, a manufacturer may not limit any or all of

the subscription options to just one make or one model.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, etc., while allowing ready identification of the latest vehicle calibration.

Manufacturers who do not use model year to classify their vehicles in their service information may use an alternate vehicle delineation such as body series. Any manufacturer utilizing this flexibility shall create a cross-reference to the corresponding model year and provide this cross-reference on the manufacturer Web site home page.

(vi) Provide accessibility using common, readily available software and shall not require the use of software, hardware, viewers, or browsers that are not readily available to the general public. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from government Web sites and automotive-related Web sites.

(viii) Allow access to the manufacturer Web sites with no limits on the modem speed by which aftermarket service providers or other interested parties can connect to the manufacturer Web site.

(ix) Possess sufficient server capacity to allow ready access by all users and have sufficient capacity to assure that all users may obtain needed information without undue delay.

(x) Correct or delete broken Web links on a weekly basis.

(xi) Allow for Web site navigation that does not require a user to return to the manufacturer home page or a search engine in order to access a different portion of the site.

(xii) Allow all users to print out any and all of the materials required to be made available on the manufacturers Web site, including the ability to print it at the users location.

(4) *Small volume provisions for information dissemination.* (i) Manufacturers with annual sales of less than 5,000 vehicles shall have until June 28, 2004 to launch their individual Web sites as required by paragraph (f)(3) of this section.

(ii) Manufacturers with annual sales of less than 1,000 vehicles may, in lieu of meeting the requirement of paragraph (f)(3) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be

obtained by the persons specified in paragraph (f)(2)(i) of this section.

(5) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites. This excludes indirect information specified in paragraphs (f)(6) and (f)(12) through (f)(16) of this section. To the extent that this information does not already exist in some form for their manufacturer-franchised dealerships, manufacturers are required to develop and make available the information required by this section to both their manufacturer-franchised dealerships and the aftermarket. The required information includes, but is not limited to:

(i) Manuals, including subsystem and component manuals developed by a manufacturer's third party supplier that are made available to manufacturer-franchised dealerships, technical service bulletins (TSBs), recall service information, diagrams, charts, and training materials. Manuals and other such service information from third party suppliers are not required to be made available in full-text on manufacturer Web sites as described in paragraph (f)(3) of this section. Rather, manufacturers must make available on the manufacturer Web site as required by paragraph (f)(3) of this section an index of the relevant information and instructions on how to order such third party information. In the alternative, a manufacturer can create a link from its Web site to the Web site(s) of the third party supplier.

(ii) OBD system information which includes, but is not limited to, 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 diagnostic trouble codes associated with each monitor;

(C) A description of the typical enabling conditions (either generic or monitor-specific) for each monitor (if equipped) 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. In addition, manufacturers shall list all 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 (EGR), secondary air, and air conditioning system. Additionally, for diesel vehicles under 14,000 pounds

GVWR which also perform misfire, fuel system and comprehensive component monitoring under specific driving conditions (*i.e.*, non-continuous monitoring; as opposed to spark ignition engines that monitor these systems under all conditions or continuous monitoring), the manufacturer shall make available monitor-specific drive cycles. Any manufacturer who develops generic drive cycles, either in addition to, or instead of, monitor-specific drive cycles shall also make these available in full-text on manufacturer Web sites;

(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 parameters for specific vehicles that deviate from the typical parameters, the OBD description shall indicate the deviation and provide a separate listing of the typical values for those vehicles;

(G) 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, "EE Diagnostic Test Modes" (Incorporated by reference, *see* § 86.1).

(H) Algorithms, look-up tables, or any values associated with look-up tables are not required to be made available.

(iii) Any information regarding any system, component, or part of a vehicle monitored by the OBD system that could in a failure mode cause the OBD system to illuminate the malfunction indicator light (MIL);

(iv) Any information on other systems that can effect the emission system within a multiplexed system (including how information is sent between emission-related system modules and other modules on a multiplexed bus);

(v) Manufacturer-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides, and/or repair procedures associated with these manufacturer-specific DTCs; and

(vi) Information regarding how to obtain the information needed to perform reinitialization of any vehicle computer or anti-theft system following an emissions-related repair.

(6) *Anti-theft system initialization information.* Computer or anti-theft system initialization information and/or related tools necessary for the proper installation of on-board computers or necessary for the completion of any emissions-related repair on motor vehicles that employ integral vehicle security systems or the repair or replacement of any other emission-

related part shall be made available at a fair and reasonable cost to the persons specified in paragraph (f)(2)(i) of this section.

(i) Except as provided under paragraph (f)(6)(ii) of this section, manufacturers must make this information available to persons specified in paragraph (f)(2)(i) of this section, such that such persons will not need any special tools or manufacturer-specific scan tools to perform the initialization. Manufacturers may make such information available through, for example, generic aftermarket tools, a pass-through device, or inexpensive manufacturer specific cables.

(ii) A manufacturer may request Administrator approval for an alternative means to re-initialize vehicles for some or all model year vehicles through the 2007 model year by 1 month following the effective date of the final rule. The Administrator shall approve the request only after the following conditions have been met:

(A) The manufacturer must demonstrate that the availability of such information to aftermarket service providers would significantly increase the risk of vehicle theft.

(B) The manufacturer must make available a reasonable alternative means to install or repair computers, or to otherwise repair or replace an emission-related part.

(C) Any alternative means proposed by a manufacturer cannot require aftermarket technicians to use a manufacturer-franchised dealership to obtain information or special tools to re-initialize the anti-theft system. All information must come directly from the manufacturer or a single manufacturer-specified designee.

(D) Any alternative means proposed by and manufacturer must be available to aftermarket technicians at a fair and reasonable price.

(E) Any alternative must be available to aftermarket technicians within twenty-four hours of the initial request.

(F) Any alternative must not require the purchase of a special tool or tools, including manufacturer-specific tools, to complete this repair. Alternatives may include lease of such tools, but only for appropriately minimal cost.

(G) In lieu of leasing their manufacturer-specific tool to meet this requirement, a manufacturer may also release the necessary information to equipment and tool manufacturers for incorporation into aftermarket scan tools. Any manufacturer choosing this option must release the information to equipment and tool manufacturers within 60 days of Administrator approval. Manufacturers may also

comply with this requirement using SAE J2534 for some or all model years through model year 2007.

(7) *Cost of required information.* (i) All information required to be made available by this section, shall be made available at a fair and reasonable price. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the following:

(A) The net cost to the manufacturer-franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(B) The cost to the 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 manufacturers for similar information.

(D) The price charged by manufacturers for similar information prior to the launch of manufacturer Web sites.

(E) The ability of aftermarket technicians or shops 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.

(H) Inflation.

(ii) By August 26, 2003, each manufacturer shall submit to the Administrator a request for approval of their pricing structure for their Web sites and amounts to be charged for the information required to be made available under paragraphs (f)(3) and (f)(5) of this section. Subsequent to the approval of the manufacturer Web site pricing structure, each manufacturer shall notify the Administrator upon the increase in price of any one or all of the subscription options of 20 percent or more above the previously approved price, taking inflation into account.

(A) The manufacturer shall submit a request to the Administrator that sets forth a detailed description of the pricing structure and amounts, and support for the position that the pricing structure and amounts are fair and reasonable by addressing, at a minimum, each of the factors specified in paragraph (f)(7)(i) of this section.

(B) The Administrator will act upon on the request within 180 days following receipt of a complete request

or following receipt of any additional information requested by the Administrator.

(C) The Administrator may decide not to approve, or to withdraw approval for a manufacturer's pricing structure and amounts based on a conclusion that this pricing structure and/or amounts are not, or are no longer, fair and reasonable, by sending written notice to the manufacturer explaining the basis for this decision.

(D) In the case of a decision by the Administrator not to approve or to withdraw approval, the manufacturer shall within three months following notice of this decision, obtain Administrator approval for a revised pricing structure and amounts by following the approval process described in this paragraph (f)(7)(ii).

(8) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of these regulations and section 202(m)(5) of the Clean Air Act.

(9) *Third-party information providers.* By December 24, 2003, manufacturers shall, for model year 2004 and later vehicles and engines, make available to third-party information providers as defined in paragraph (f)(2)(ii) of this section with whom they engage in licensing or business arrangements;

(i) The required emissions-related information as specified in paragraph (f)(5) of this section either:

(A) Directly in electronic format such as diskette or CD-ROM using non-proprietary software, in English; or

(B) Indirectly via a Web site other than that required by paragraph (f)(3) of this section;

(ii) For any manufacturer who utilizes an automated process in their manufacturer-specific scan tool for diagnostic fault trees, the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iii) Manufacturers can satisfy the requirement of paragraph (f)(9)(ii) of this section by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(iv) Manufacturers are not responsible for the accuracy of the information distributed by third parties. However, where manufacturers charge information intermediaries for information, whether through licensing agreements or other arrangements, manufacturers are responsible for inaccuracies contained in the information they provide to third-party information providers.

(10) *Required emissions-related training information.* By December 24, 2003, for emissions-related training information, manufacturers shall:

(i) Video tape or otherwise duplicate and make available for sale on manufacturer Web sites within 30 days after transmission any emissions-related training courses provided to manufacturer-franchised dealerships via the Internet or satellite transmission;

(ii) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 1994 and newer vehicles. For model years subsequent to 2003, the required information must be made available for purchase within 3 months of model introduction and then must be made available at the same time it is made available to manufacturer-franchised dealerships, whichever is earlier. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site. All of the items available must be shipped within 24 hours of the order being placed and are to be made available at a fair and reasonable price as described in section (f)(7) of this section. Manufacturers unable to meet the 24 hour shipping requirement under circumstances where orders exceed supply and additional time is needed by the distributor to reproduce the item being ordered, may exceed the 24 hour shipping requirement, but in no instance can take longer than 14 days to ship the item.

(iii) Provide access to third-party training providers as defined in paragraph (f)(2)(ii) of this section all emission-related training courses transmitted via satellite or Internet offered to their manufacturer-franchised dealerships. Manufacturers may not charge unreasonable up-front fees to third-party training providers for this access, but may require a royalty, percentage, or other arranged fee based on per-use enrollment/subscription basis. Manufacturers may take reasonable steps to protect any copyrighted information and are not required to provide this information to parties that do not agree to such steps.

(11) *Timeliness and maintenance of information dissemination.* (i) General requirements. Subsequent to the initial launch of the manufacturer's Web site, manufacturers must make the information required under paragraph (f)(5) of this section available on their Web site within six months of model introduction, or at the same time it is made available to manufacturer-

franchised dealerships, whichever is earlier. After this six-month period, the information must be available and updated on the manufacturer Web site at the same time that the updated information is made available to manufacturer-franchised dealerships, except as otherwise specified in this section.

(ii) *Archived information.*

Manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (f)(5) of this section for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived information on the manufacturer Web site and how it can be obtained by interested parties. Manufacturers shall index their available information with a title that adequately describes the contents of the document to which it refers. Manufacturers may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the manufacturer Web site. In the alternative, manufacturers shall list a phone number and address where aftermarket service providers can call or write to obtain the desired information. Manufacturers must also provide the price of each item listed, as well as the price of items ordered on a subscription basis. To the extent that any additional information is added or changed for these model years, manufacturers shall update the index as appropriate. Manufacturers will be responsible for ensuring that all information, including information that is distributed through information distributors, is provided within one regular business day of receiving the order. Items that are less than 20 pages (e.g. technical service bulletins) shall be faxed, if requested, to the requestor and distributors are required to deliver the information overnight if requested and paid for by the ordering party. Archived information must be made available on demand and at a fair and reasonable price.

(12) *Reprogramming information.* (i) Manufacturers shall make available to the persons specified in paragraph (f)(2)(i) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of its choice at the same time they are made available to manufacturer-franchised dealerships. This requirement takes effect on September 25, 2003, and within 3

months of model introduction for all new model years.

(ii) Manufacturers shall provide persons specified in paragraph (f)(2)(i) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued. This requirement takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(iii) For all 2004 and later OBD vehicles equipped with reprogramming capability, manufacturers shall comply with SAE J2534 (Incorporated by reference, see § 86.1). Any manufacturer who cannot comply with SAE J2534 in model year 2004 may request one year additional lead time from the Administrator.

(iv) For model years 2004 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems as specified in SAE J2534 (Incorporated by reference, see § 86.1).

(v) For model years prior to 2004, manufacturers may use SAE J2534 as described above, provided they make available to the aftermarket any additional required hardware (i.e., cables). Manufacturers may not require the purchase or use of a manufacturer-specific scan tool to receive or use this additional hardware. Manufacturers must also make available the necessary manufacturer-specific software applications and calibrations needed to initiate pass-through reprogramming. Manufacturers must also make available to equipment and tool companies any information needed to develop aftermarket equivalents of the manufacturer-specific hardware.

(vi) Manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions. The requirement to make hardware available and to release the information to equipment and tool companies takes effect on September 25, 2003, and within 3 months of model introduction for all new model years.

(vii) Manufacturers who cannot comply with paragraphs (f)(12)(v) and (f)(12)(vi) of this section shall make available to equipment and tool companies by September 25, 2003 the

following information necessary for reprogramming the ECU:

(A) The physical hardware requirements for reprogramming events or tools (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.).

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.).

(C) Information on the application physical interface (API) or layers (descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination).

(D) Vehicle application information or any other related service information such as special pins and voltages for reprogramming events or additional vehicle connectors that require enablement and specifications for the enablement.

(E) Information that describes what interfaces or combinations of interfaces are used to deliver calibrations from database media (e.g. PC using CDROM to the reprogramming device e.g. scan tool or black box).

(viii) A manufacturer can propose an alternative to the requirements of paragraph (f)(12)(vii) of this section for how aftermarket service providers can reprogram an ECU. The Administrator will approve this alternative if the manufacturer demonstrates all of the following:

(A) That it cannot comply with paragraph (f)(12)(v) of this section for the vehicles subject to the alternative plan;

(B) That a very small percentage of its vehicles in model years prior to 2004 cannot be reprogrammed with the provisions described in paragraph (f)(12)(v) of this section, or that releasing the information to tool companies would likely not result in this information being incorporated into aftermarket tools; and

(C) That aftermarket service providers will be able to reprogram promptly at a reasonable cost.

(ix) In meeting the requirements of paragraphs (f)(12)(v) through (f)(12)(vii) of this section, manufacturers may take any reasonable business precautions necessary to protect proprietary business information and are not required to provide this information to any party that does not agree to these reasonable business precautions.

(13) *Generic and enhanced information for scan tools.* By September 25, 2003, manufacturers shall make available to equipment and tool companies all generic and

enhanced service information including bi-directional control and data stream information as defined in paragraph (f)(2)(ii) of this section. This requirement applies for 2001 and later model year vehicles.

(i) The information required by this paragraph (f)(13) of this section shall be provided electronically using common document formats to equipment and tool companies with whom they have appropriate licensing, contractual, and/or confidentiality arrangements. To the extent that a central repository for this information (e.g. the TEK-NET library developed by the Equipment and Tool Institute) is used to warehouse this information, the Administrator shall have free unrestricted access. In addition, information required by paragraph (f)(13) of this section shall be made available to equipment and tool companies who are not otherwise members of any central repository and shall have access if the non-members have arranged for the appropriate licensing, contractual and/or confidentiality arrangements with the manufacturer and/or a central repository.

(ii) In addition to the generic and enhanced information defined in paragraph (f)(2)(ii) of this section, manufacturers shall also make available the following information necessary for developing generic diagnostic scan tools:

(A) The physical hardware requirements for data communication (e.g. system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.)

(B) ECU data communication (e.g. serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(C) Information on the application physical interface (API) or layers. (i.e., processing algorithms or software design descriptions for procedures such as connection, initialization, and termination),

(D) Vehicle application information or any other related service information such as special pins and voltages or additional vehicle connectors that require enablement and specifications for the enablement.

(iii) Any manufacturer who utilizes an automated process in its manufacturer-specific scan tool for diagnostic fault trees shall make available to equipment and tool companies the data schema, detail specifications, including category types/codes and vehicle codes, and data format/content structure of the diagnostic trouble trees.

(iv) Manufacturers can satisfy the requirement of this paragraph (f)(13)(iii)

by making available diagnostic trouble trees on their manufacturer Web sites in full-text.

(14) *Availability of manufacturer-specific scan tools.* Manufacturers shall make available for sale to the persons specified in paragraph (f)(2)(i) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. These tools shall also be made available in a timely fashion either through the manufacturer Web site or through a manufacturer-designated intermediary. Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third party of its choice. Factors for determining fair and reasonable cost include, but are not limited to:

(i) The net cost to the manufacturer's franchised dealerships for similar tools obtained from manufacturers, less any discounts, rebates, or other incentive programs;

(ii) The cost to the manufacturer for preparing and distributing the tools, excluding any research and development costs;

(iii) The price charged by other manufacturers of similar sizes for similar tools;

(iv) The capabilities and functionality of the manufacturer tool;

(v) The means by which the tools are distributed;

(vi) Inflation;

(vii) The ability of aftermarket technicians and shops to afford the tools.

(15) *Changing content of manufacturer-specific scan tools.* Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (f)(2)(i) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer specific tool. Any manufacturer who wishes to implement this option must request approval from the Administrator prior to the introduction of the tool into commerce.

(16) *Special tools.* (i) Manufacturers who have developed special tools to

extinguish the malfunction indicator light (MIL) for Model Years 2001 through 2003 shall make available the necessary information to equipment and tool companies to design a comparable generic tool. This information shall be made available to equipment and tool companies no later than September 23, 2003.

(ii) Manufacturers are prohibited from requiring special tools to extinguish the malfunction indicator light (MIL) beginning with Model Year 2004.

(17) *Reference materials.*

Manufacturers shall conform with the following Society of Automotive Engineers (SAE) standards.

(i) For Web-based delivery of service information, manufacturers shall comply with SAE Recommended Practice J1930 (Revised, May 1998), "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms" (Incorporated by reference, see § 86.1). This recommended practice standardizes various terms, abbreviations, and acronyms associated with on-board diagnostics.

Manufacturers shall comply with SAE J1930 (Incorporated by reference, see § 86.1) beginning with Model Year 2004.

(ii) For identification and scaling information necessary to interpret and understand data available to a generic scan tool through "mode 6", manufacturers shall comply with SAE Recommended Practice J1979 (Revised, September, 1997), "EE Diagnostic Test Modes" (Incorporated by reference, see § 86.1). This recommended practice describes the implementation of the diagnostic test modes for emissions-related test data. Manufacturers shall comply with SAE J1979 beginning with Model Year 2004.

(iii) For allowing ECU and equipment and tool manufacturers to satisfy the needs of multiple end users with minimum modification to a basic ECU design, manufacturers shall comply with SAE Recommended Practice J2284-3 (May, 2001), "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS" (Incorporated by reference, see § 86.1). SAE J2284-3 establishes standard ECU physical layer, data link layer, and media design criteria.

Manufacturers may comply with SAE J2284-3 beginning with model year 2003 and shall comply with SAE J2284-3 beginning with model year 2008.

(iv) For pass-through reprogramming capabilities, manufacturers shall comply with SAE Recommended Practice J2534 (February, 2002), "Recommended Practice for Pass-Thru Vehicle Programming" (Incorporated by reference, see § 86.1). This

recommended practice provides technical specifications and information that manufacturers must supply to equipment and tool companies to develop aftermarket pass-through reprogramming tools. Manufacturers shall comply with SAE J2534 beginning with model year 2004.

(18) *Reporting requirements.* Manufacturers shall provide to the Administrator reports on an annual basis within 30 days of the end of the calendar year and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. Manufacturers may request Administrator approval to report on parameters other than those described below if the manufacturer can demonstrate that those alternate parameters will provide sufficient and similar information for the Administrator to effectively evaluate the manufacturer Web site. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests (measured in number of files including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, *i.e.* electronic images such as wiring or other diagrams or pictures). This is defined as the total successful request counts of all the files which

have been requested, including pages, graphics, etc.

(ii) Total failed requests (measured in number of files). This is defined as the total failed request counts of all the files which were requested but failed because they could not be found or were read-protected. This includes pages, graphics, etc.

(iii) Average data transferred per day (measured by bytes). This is defined as average amount of data transferred per day from one place to another.

(iv) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests each day of the week, over the time period given at the beginning of the report.

(v) Daily report (measured in number of files/pages by the day of the month). This is defined as how many requests there were in each day of a specific month.

(vi) Browser Summary (measured in number of files/pages by browser type, *i.e.*, Netscape, Internet Explorer). This is defined as the versions of a browser by vendor.

(vii) Any other information deemed necessary by the Administrator to determine the adequacy of an manufacturer Web site.

(19) *Prohibited Acts, Liability and Remedies.* (i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (f), or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (f).

(ii) Any person who fails or causes the failure to comply with any provision of this paragraph (f) is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision of this paragraph (f) shall be subject to a civil penalty of not more than \$ 31,500 per day for each violation. This maximum penalty is shown for calendar year 2002. Maximum penalty limits for later years may be set higher based on the Consumer Price Index, as specified in 40 CFR part 19. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

■ 10. Section 86.1808–07 is amended by revising paragraphs (a) through (f) to read as follows:

§ 86.1808–07 Maintenance instructions.

* * * * *

(a) through (e) [Reserved]. For guidance see § 86.1808–1.

(f) [Reserved]. For guidance see § 86.1808–1. For incorporation by reference see §§ 86.1 and 86.1808–1.

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