

State of California
AIR RESOURCES BOARD

Resolution 01-55

December 13, 2001

Agenda Item No.: 01-10-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "Board") to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that the Board may delegate any duty to the Executive Officer which the Board deems appropriate and that any power, duty, purpose, function, or jurisdiction which the Board may lawfully delegate shall be conclusively presumed to have been delegated to the Executive Officer unless the Board has expressly reserved such authority onto itself;

WHEREAS, section 43018 of the Health and Safety Code directs the Board to endeavor to achieve the maximum degree of emissions reduction possible from vehicular and other mobile sources to accomplish the attainment of state ambient air quality standards by the earliest practicable date;

WHEREAS, section 43105.5 of the Health and Safety Code requires the Board, to the extent not limited or prohibited by federal law, to adopt regulations no later than January 1, 2002, that make available emission-related service information for 1994 model year and later passenger cars, light-duty trucks, and medium-duty vehicles to persons engaged in the service and repair of motor vehicles and the manufacture of motor vehicle parts;

WHEREAS, in enacting section 43105.5 of the Health and Safety Code, the State Legislature found that:

There are over 26 million registered motor vehicles in California, and that California residents rely heavily upon those vehicles to conduct their everyday activities;

The use of those motor vehicles results in hundreds of tons of pollutants being emitted into California's air every day, significantly affecting air quality and public health and safety;

It is in the best interests of the state to ensure that California motorists have the ability to obtain service, repair, or replacement of faulty emissions-related components of their motor vehicles and that such ability not be limited by the arbitrary withholding of service, repair, or parts information by motor vehicle manufacturers; and

Such a withholding of information from independent automotive repair technicians by vehicle manufacturers may result in improper and needlessly costly repairs that could endanger the public and result in anticompetitive effects harmful to the best interests of the state;

WHEREAS, the occurrence of emission-related malfunctions in those vehicles causes them to emit significantly more pollutants into the air than properly maintained vehicles;

WHEREAS, it was the intent of the State Legislature in enacting section 43105.5 of the Health and Safety Code to assure and stimulate competition in the service and repair of motor vehicles and in having parts available for those repairs;

WHEREAS, Article 3, Section 3.5 of the California Constitution provides that no administrative agency may declare any statute to be unenforceable or to refuse to enforce a statute on the basis of being prohibited or limited by federal law or regulations unless an appellate court has made a determination to that effect.

WHEREAS, in August 1995, the United States Environmental Protection Agency (U.S. EPA) adopted a service information rule that made service and repair information available to aftermarket service providers for 1994 model year and later motor vehicles;

WHEREAS, the U.S. EPA is considering but has not as yet adopted amendments to the existing federal service information rule that would, among other things, make full-text information available on the Internet;

WHEREAS, the Legislature, in 1995 and 1996, amended the Administrative Procedure Act (Stats. 1995, Ch.938 (SB 523) and Stats. 1996, Ch. 390 (SB 794)), to promote greater uniformity in state agency hearing procedures; make state agency hearing procedures more accessible to the public; improve fairness of state agency hearing procedures; and modernize and add greater flexibility to state agency hearing procedures;

WHEREAS, the Board has considered the effects of its proposed rulemaking on the economy of the State;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, the Board finds that:

1. The prompt and effective repair of emission-related malfunctions from motor vehicles will minimize the amount of excess emissions caused by such malfunctions.
2. Access to complete emission-related service information by independent service and repair facilities and parts manufacturers is necessary for such facilities to properly identify and repair emission-related malfunctions.
3. Use of the Internet will provide the independent service and repair industry and aftermarket parts manufacturers with convenient and timely access to manufacturers' emission-related service information.
4. The availability of motor vehicle manufacturer diagnostic tools and information, which have typically only been made available to franchised dealerships, to aftermarket tool companies will allow the aftermarket companies to develop tools that will help ensure that the independent service and repair industry has access to all equipment necessary to effectively repair emission-related malfunctions.
5. To address motor vehicle manufacturers' concerns regarding the quality of diagnostic tools available to the aftermarket, motor vehicle manufacturers should be afforded the right to petition the Executive Officer to refuse to provide data stream and bi-directional control information to aftermarket tool manufacturers for which legitimate concerns regarding quality exist.
6. The availability of motor vehicle reprogramming equipment and information will ensure that the independent service and repair industry is able to install on-board computer software updates issued by motor vehicle manufacturers.
7. In addressing the need for making initialization procedures related to immobilizer circuits available to the aftermarket so that it may properly service and repair vehicles, it is appropriate to balance the need of motor vehicle manufacturers that vehicle security systems not be compromised.
8. The regulation properly balances these conflicting needs by requiring manufacturers to provide the aftermarket with information on initialization procedures related to immobilizer circuits that are necessary for the proper installation of on-board computers, and the repair and replacement of other emission-related parts, while providing manufacturers the opportunity to

receive sufficient lead time to address vehicle security concerns prior to being required to fully disclose such information.

9. In approving paragraph (d)(3) of the regulation requiring manufacturers to provide initialization procedures, it is cognizant that remanufacturers of on-board computers may be adversely impacted by the Board's determination on balance that motor vehicle manufacturers are not required to provide special initialization information to remanufacturers for the bench testing of on-board computers.
10. The requirement for motor vehicle manufacturers to make available basic OBD II design information for 1996 model year and later vehicles to the independent service and repair industry and aftermarket parts manufacturers will help ensure that vehicles with detected malfunctions are properly serviced and repaired and that aftermarket parts are compatible with original equipment OBD II systems.
11. The regulations establish enforcement procedures, including provisions for assessment of monetary penalties that will help ensure effective compliance with the service information availability requirements.
12. The regulations establish hearing procedures that meet the requirements of the Administrative Adjudication Bill of Rights, Chapter 4.5, Article 6 of the Administrative Procedures Act, and such procedures afford due process to all parties.
13. The costs of all emission-related service information and tools must be fair, reasonable, and nondiscriminatory.
14. The proposed service information regulations are significantly similar to the proposed amendments to the federal service information rule and, if adopted, would not require manufacturers to duplicate compliance efforts.
15. No appellate court has, to date, made a determination that the directives of section 43105.5(a) of the Health and Safety Code that motor vehicle manufacturers make available specific service related information by reasonable business means, including, but not limited to the use of the Internet, is unenforceable because of being prohibited by federal law or regulations.
16. The economic and fiscal impacts of the service information regulations have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Notice and Initial Statement of Reasons for this rulemaking.
17. The service information regulations will not have any significant adverse impact on the environment.

WHEREAS, the Board further finds that:

1. While the service information regulations will not create new emission reductions, they will ensure that the emission benefits attributed to California's Low Emission Vehicle (LEV) and OBD II programs are achieved.
2. Adoption of the service information regulations will help independent service facilities and aftermarket part manufacturers to compete effectively with franchised dealerships for consumers' business.
3. Adoption of the service information regulations will provide consumers with a greater choice in who services their vehicles, thereby making it more likely that they will have their vehicles repaired when an emission-related problem occurs.
4. There is no feasible alternative considered by the Board that would be more effective in carrying out the purposes of Health and Safety Code section 43105.5 or would be as effective and less burdensome to affected private persons.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves for adoption section 1969, title 13, California Code of Regulations and article 2.5, title 17, California Code of Regulations, as set forth in Attachments A and B hereto, with modifications, including but not necessarily limited to, a provision that would provide motor vehicle manufacturers the right to petition the Executive Officer to refuse to provide data stream and bi-directional control information to specific tool and equipment manufacturers.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt section 1969, title 13, California Code of Regulations, and article 2.5, title 17, California Code of Regulations, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the ARB staff to work with the motor vehicle manufacturers and the remanufacturers of on-board computers to attempt to see if a way exists that would allow remanufacturers to effectively bench test rebuilt computers with immobilizer circuitry without compromising motor vehicle security.

BE IT FURTHER RESOLVED that the Board directs the ARB staff to monitor the progress of motor vehicle manufacturers in meeting the provisions set forth in the regulation requiring motor vehicle manufacturers to provide the aftermarket service and repair industry with information to reinitialize motor vehicles after installation of on-board computers or the repair or replacement of other emission-related parts.

BE IT FURTHER RESOLVED that the Board directs the ARB staff to report back to the Board within one year on the status of the issues set forth in the preceding two paragraphs, with recommendations for amending the regulation if necessary.

BE IT FURTHER RESOLVED that the Board directs ARB staff to monitor the implementation and effectiveness of the regulations adopted herein and to make such recommendations to the Board for amending the regulations, if necessary, by on or around December 2003.

BE IT FURTHER RESOLVED that the Board hereby determines that the regulations adopted herein will not cause California motor vehicle emission standards, in the aggregate, to be less protective of public health and welfare than applicable federal standards.

BE IT FURTHER RESOLVED that the Board finds that the provisions adopted herein will not cause the California requirements to be inconsistent with section 202(a) of the Clean Air Act and raise no new issues affecting previous waiver determinations of the Administrator of the U.S. EPA pursuant to section 209(b) of the Clean Air Act.

I hereby certify that the above is a true and correct copy of Resolution 01-55 , as adopted by the Air Resources Board

Marie Kavan, Clerk of the Board

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December 13, 2001

Identification of Attachments to the Resolution

Attachment A:

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

Attachment B:

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