State of California
AIR RESOURCES BOARD

**Final Statement of Reasons for Rulemaking,
Including Summary of Comments and Agency Response**

PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE AVAILABILITY OF CALIFORNIA MOTOR VEHICLE SERVICE INFORMATION

Public Hearing Date: June 22, 2006
Agenda Item No.: 06-6-3

I. GENERAL

The Staff Report: Initial Statement of Reasons for Rulemaking (Staff Report), entitled "Public Hearing to Consider Amendments to Regulations for the Availability of California Motor Vehicle Service Information," released May 5, 2006, is incorporated by reference herein.

Following a public hearing on June 22, 2006, the Air Resources Board (Board or ARB) by Resolution 06-19 approved, with modifications, amendments to the service information regulations for 1996 model year and later passenger cars, light-duty trucks, medium-duty engines and vehicles, and 2007 model year and later heavy-duty engines equipped with on-board diagnostic ("OBD") systems. (Resolution 06-19 is included in this rulemaking record and incorporated herein.) The service information regulation, initially adopted in 2002 and implemented beginning in 2003, set forth in section 1969, title 13, California Code of Regulations (13 CCR section 1969), and title 17 CCR sections 60060.1 through 60060.34. The June 2006 Board action amends both of these documents.

At the public hearing, the board approved the amendments originally proposed as part of the 45-Day Notice of Proposed Rulemaking, as well as additional amendments suggested by staff at the hearing in response to comments received from stakeholders. The Board also directed staff to continue to work with interested stakeholders in resolving issues that the stakeholders may have regarding several issues, including the need to provide certain transmission-related information. On November 30, 2006, staff issued a Notice of Public Availability of Modified Text (15-Day Notice) outlining the changes made to the regulation in response to comments received during the initial 45-day comment period. The 15-Day Notice is incorporated by reference herein.

13 CCR section 1969 incorporates by reference the following recommended practices and documents:

Society of Automotive Engineers (SAE) J1930, "Electrical/Electronic Systems, Diagnostic Terms, Definitions, Abbreviations, and Acronyms – Equivalent to ISO/TR 15031-2: April 30, 2002," April 2002.

SAE J1939, “Recommended Practice for a Serial Control and Communications Vehicle Network “ and the associated subparts in SAE HS-1939, Truck and Bus Control and Communications Network Standards Manual,” 2005 Edition.

SAE J1979, “E/E Diagnostic Test Modes – Equivalent to ISO/DIS 15031-5: April 30, 2002,” April 2002.

SAE J2403, “Medium/Heavy-Duty E/E Systems Diagnosis Nomenclature,” August 2004.

SAE J2534, “Recommended Practice for Pass-Thru Vehicle Programming,” December 2004.

Technology and Maintenance Council, Recommended Practice RP1210A, “Windows™ Communication API,” July 1999.

Existing administrative practice of ARB has been to have technical recommended practices, such as SAE documents, incorporated by reference rather than printed in the CCR. These procedures are highly complex and technical documents. They include “nuts and bolts” engineering protocols and have a limited audience. Because ARB has never printed recommended practice documents in the CCR, the affected public is accustomed to the incorporation format utilized in 13 CCR section 1969. Moreover, printing portions of the documents in the CCR when the bulk of the procedures are incorporated by reference would be unnecessarily confusing to the affected public. The full documents are instead available for public inspection from the Clerk of the Board at 1001 “I” Street, 23rd floor, Sacramento, California 95814.

Background. The service information regulation was developed pursuant to the requirements of Senate Bill 1146 (SB 1146), codified in Health and Safety Code (H&SC) section 43105.5. Enacted on September 30, 2000, the statute required ARB to adopt a service information regulation by January 1, 2002.

The service information regulation was originally approved by the Board on December 13, 2001, and implemented on March 30, 2003. Its primary purpose is to increase competition in the service, repair, and aftermarket part industries by making dealership-quality, emission-related service information and tools available for purchase by independent service facilities and aftermarket part companies over the Internet. The types of service information required by the regulation include, but are not limited to, service manuals, technical service bulletins, OBD information, wiring diagrams, training materials, and reprogramming and diagnostic tools. In the past, some service information was only available to motor vehicle manufacturers’ franchised dealerships. The United States Environmental Protection Agency (U.S. EPA) has implemented an amended, federal service regulation since May 2003 that is very similar to California’s, with the exception that it does not apply to heavy-duty vehicles greater than 14,000 pounds. On January 24, 2007, the U.S. EPA did

publish its own proposed service information requirements for heavy-duty vehicles in the Federal Register. Many of the provisions in that proposal are similar to those in ARB's recently amended regulation, but several differences do exist, most notably in regards to compliance flexibility and tool availability dates. Staff from the U.S. EPA though has indicated an ongoing desire to continue harmonization with ARB's heavy-duty provisions for service information wherever possible. The comment period for the proposal ended on May 4, 2007.

In regard to heavy-duty vehicles, ARB staff proposed amendments to the service information regulation on January 22, 2004, that extended applicability to 2007 model year and later heavy-duty vehicles equipped with OBD systems. The aftermarket industry had previously indicated that there was an increased demand for heavy-duty service information and tools. With ARB's development of a heavy-duty OBD-related regulation (called Engine Manufacturer Diagnostics, or EMD) in 2004, the need became even greater. The Board approved the amendments broadening the service information regulation's applicability to heavy-duty engines, but directed the staff to continue working with heavy-duty engine manufacturers on possible liability issues that could result from the availability of heavy-duty tools and related information.

Compared to light- and medium duty tools, heavy-duty tools are typically more powerful in that they are capable of performing numerous engine calibration changes. Engine Manufacturers were concerned that tool misuse and/or engine tampering posed a significant concern. They were also uncertain as to what types of information would need to be provided in such tools due once ARB adopts more comprehensive OBD requirements that it had noticed it would be adopting.

The Board revisited the heavy-duty tool issue on May 20, 2004. At that meeting, staff proposed that the amendments regarding availability of heavy-duty tools, be deleted from the amendments approved for adopting in January 2004. The Board approved staff's proposal, finding that manufacturers needed additional lead time to respectively incorporate the necessary safeguards and diagnostic information into these tools.

On July 21, 2005, the Board approved more comprehensive OBD requirements for 2010 model year and later heavy-duty engines. Subsequently, staff proposed the instant amendments to the service information regulation that conform to the requirements for the availability of heavy-duty tools and information with the timeframes set forth in the heavy-duty OBD regulation. Among other things, the amendments require that engine manufacturers make available heavy-duty tools and information beginning with the 2013 model year, the year in which heavy-duty OBD communication protocols would be fully standardized. Staff also proposed optional compliance provisions, regulatory definitions, tool training requirements, and additional recommended practices.

Economic and Fiscal Impacts. Staff estimated that the primary costs of compliance with this regulatory action are associated with the redesign and/or updating of

engine manufacturer's heavy-duty diagnostic, recalibration, and reconfiguration tools and software that will be made available to the independent service and aftermarket parts industry. Using information provided by heavy-duty engine manufacturers, staff estimated that start-up costs for an individual engine manufacturer to make these tools and information available to independent service facilities and tool companies would be approximately $1.5 million, with annual maintenance costs being approximately $70,000. To offset some or all of the compliance costs, manufacturers are permitted to set fair, reasonable, and non-discriminatory prices for the tools and information.

The wider availability of emission-related service information and tools will benefit independent service facilities, aftermarket part manufacturers, and owners of heavy-duty vehicles by ensuring that repairs are completed efficiently at reasonable rates. The aftermarket industry will incur additional expenses as a result of the amendments only if they choose to purchase such tools and information. However, in doing so, it is assumed that the purchases will be based on business decisions made in expectation of creating a profit. The loss of some business for both franchised dealerships and authorized service networks may result as independent service facilities conduct more repairs using the tools and information made available by these amendments. Still, this competitive effect was clearly recognized by the California Legislature when SB 1146 was originally drafted.

The Board has determined that this regulatory action does not impose a mandate on any local agency or school district, the costs of which are reimbursable by the state pursuant to Part 7 (commencing with section 17500), Division 4, Title 2 of the Government Code.

Alternatives. For the reasons stated in the Staff Report and this Final Statement of Reasons, the Board determined that no alternative considered by ARB would be more effective in carrying out the purpose for which the regulatory action was proposed or would be as effective and less burdensome to affected private persons than the action taken by the Board.

II. MODIFICATIONS TO THE ORIGINAL PROPOSAL

The 15-Day Notice included modifications to the original proposal. They were presented to and approved by the Board at the June 2006 hearing. The main modifications require that engine manufacturers make available emission-related transmission information if they design OBD systems that rely on transmission inputs, provide additional information if they elect to use optional compliance provisions, and allow engine manufacturers to include indemnity clauses in agreements with aftermarket tool and equipment companies when engine manufacturers' tool information is sold.

Based on the comments received from the Engine Manufacturers Association in response to the 15-Day Notice, staff has also made several non-substantive grammatical revisions to the service information regulation at 13 CCR sections

1969(g)(2) and 1969(h)(2)(C). The language for both sections was originally proposed in the 15-Day Notice and allows engine manufacturers the option to require indemnity clauses in business agreements made with aftermarket tool and equipment companies. In both cases, the word "are" should be changed to "is" in order to correct the sentences' subject-verb agreement. These revisions will be reflected in the final regulatory order.

Staff is also making non-substantive changes to 13 CCR sections 1969(k)(1) and 1969(k)(2) to revise incorrect subsection references in the trade secret provisions. The correct references in both should be modified to indicate "…subsections (e) through (h) above…" rather than "(d) through (g)" and "(d) through (h)," respectively, in order to accurately reflect the appropriate service information provisions subject to trade secret consideration. The references have changed due to the addition of the originally proposed amendments for optional compliance flexibility and heavy-duty tool requirements.

III. SUMMARY OF COMMENTS AND AGENCY RESPONSE

At the June 22, 2006, hearing, oral testimony was received in the following order from:

Mr. Eric Swenson, Truck Manufacturers Association (TMA)
Nr. Keith Duner, Allison Transmission
Mr. David Ferris, General Motors Corporation
Ms. Lisa Stegink, Engine Manufacturers Association (EMA)

Written comments were received during the 45-day comment period from:

Mr. Aaron Lowe, Automotive Aftermarket Industry Association (AAIA)
Mr. Robert M. Clarke, TMA
Mr. Charlie Gorman, Equipment and Tool Institute (ETI)
Mr. Michael Conlon, Heavy Vehicle Maintenance Group (HVMG)
Ms. Lisa Stegink, EMA

Written comments received in response to the 15-Day Notice were received from the following party by the December 18, 2006, deadline:

Ms. Lisa Stegink, EMA

No comments were submitted by the Office of Small Business Advocate or the Trade and Commerce Agency.

Below is a summary of each objection or recommendation made regarding the specific regulatory actions proposed and ARB's response. ARB's responses explain how the proposed action was changed to accommodate certain objections or

recommendations, and if no changes were made, the reasons therefore. The comments have been grouped by topic whenever possible.

LEGAL AUTHORITY

1. Comment: The legal authority on which ARB relies was not drafted with the heavy-duty industry in mind. Senate Bill 1146 was signed into law in response to the perceived concerns of independent service providers in the business of repairing emission-related malfunctions of passenger cars, light-duty trucks, and medium-duty vehicles. (EMA)

2. Comment: I'm also compelled to point out that the legal authority on which ARB relies here was not drafted with the heavy-duty industry in mind. Senate Bill 1146 was a distinctly light-duty effort negotiated between the light-duty industry and aftermarket service providers. And the law was not adopted with any view or intent to fix any perceived problems in the heavy-duty industry. (EMA)

   Agency Response to Comments #1-2: Similar comments were raised and addressed in the 2004 amendments to the Service Information Regulation, which initially applied the provisions of SB 1146 to heavy-duty vehicles. Pursuant to H&SC section 43105.5, the service information requirements apply to all 1994 and later model-year vehicles equipped with OBD systems. Thus, when the Board approved the EMD requirements for heavy-duty vehicles in May 2004, those vehicles effectively became subject to the directives of the legislation and provided ARB with authority to regulate. In adopting the legislation, the Legislature was fully aware of the vertical integration of the heavy-duty vehicle industry and that ARB, historically has regulated heavy-duty vehicles by requiring heavy-duty engine manufacturers to certify heavy-duty engines that meet ARB emission certification standards. EMD and OBD requirements are now part of that emission certification process. Moreover, H&SC section 43105.5 does not contain language that specifically limits the provisions of the service information regulation solely to light- and medium-duty vehicles. The needs of the independent service and aftermarket parts industries for information to make effective, timely, and less costly repairs and to be competitive with original equipment manufacturers are just as great in the heavy-duty sector as in the light- and medium-duty vehicle sectors. Consequently, for the above reasons, ARB amended the regulation in January 2004 to cover heavy-duty vehicles.

3. Comment: I think the heavy-duty industry takes long strides to service its customers and provide them with service information. The regulation is unnecessary. (EMA)

4. Comment: If SB 1146 is used to justify service information requirements for heavy-duty engines, its provisions should, at most, only be applied in a broad way, and not in a way that requires the heavy-duty industry to fit a light-duty mold that does not apply. The heavy-duty industry is much smaller and more individualized than the light-duty industry. Since more individualized

communication already occurs with respect to the servicing of heavy-duty engines and vehicles, the current heavy-duty service industry is already established and adequate to meet the need of the heavy-duty engine and vehicle service industry. (EMA)

5. Comment: We discussed with staff many times what we think is necessary and reasonable, and we don't fully support this rule because we think the staff's proposal goes far beyond that. Manufacturers of heavy-duty engines already make service information available to the independent service industry. And when this issue first came up, there were members of that industry that said we don't need a change because we are getting what we currently need. And so we think that implementing this proposed rule is not going to make the requirements or make the information substantially more available or cheaper to obtain. (EMA)

   Agency Response to Comments #3-5: See agency response to Comments #1-2. Comments received from the associations representing independent service providers and tool companies stated that there is a continually increasing need for heavy-duty service information. This will be especially true once the comprehensive OBD requirements for heavy-duty engines take effect beginning with the 2010 model year. While some engine manufacturers are making information readily accessible, others are not. Having the service information regulation apply to all engine manufacturers ensures uniformity in the level and quality of the service information and tools available to the aftermarket industry. It also reduces the possibility of discriminatory pricing.

   The regulation addresses major differences between light- and heavy-duty service information. For example, the amendments recognize that heavy-duty diagnostic, recalibration, and reconfiguration tools and information have more functional uses than light-duty tools. The amendments accordingly allow engine manufacturers, as a condition for sale, to require purchasers to take all necessary training offered by the engine manufacturer. Also, engine manufacturers are not required to provide enhanced data stream and bi-directional control information that would permit an equipment and tool company's products to modify a California-certified engine or transmission configuration. Other provisions have been either deleted or modified as applicable to respond to engine manufacturers' business practices. Examples of this include changing the applicability of the regulation from heavy-duty vehicle manufacturers to engine manufacturers, and the addition of specific requirements for heavy-duty transmission information.

DEFINITIONS

6. Comment: Further changes are needed to define "emission-related engine information" to focus on those engine components that have an impact on emissions. The way it is defined right now, it's going to catch every nut and bolt that's not emission-related, and we don't think that's appropriate. (EMA)

7. Comment: ARB must revise the definition of "emission-related engine information." Although EMA supports including a unique definition for heavy-duty, emission-related engine information, ARB must revise it to clarify that engine manufacturers are required to only provide service information that is truly emission-related. The proposed language does not focus on the components that are related to the engine from an emissions standpoint. Rather, it catches every possible component of the engine and reaches far beyond what was intended for emission-related service information purposes. ARB should instead adopt language that only specifies systems, components, or parts that are part of the diagnostic strategy for an OBD monitor. (EMA)

   Agency Response to Comments #6-7: The definition for "emission-related engine information" in 13 CCR section 1969(d)(9)(B) is derived from language specified in SB 1146. Although it may seem overly broad because it requires information associated with the engine system that may not necessarily be emission-related, the legislature, in drafting the definition of "emission-related motor vehicle information" in H&SC section 39027.3(d) intended the definition to be so. In keeping with this intent, ARB, in defining "emission related engine information" that applies to heavy-duty vehicle engines, intended that coverage should include a wide scope of components. Also see Response to Comment #8 below.

8. Comment: We urge the Board to amend the definition of "emissions-related engine information" in subsection (d)(8) so that it is the same as that for "emissions-related motor vehicle information" in subsection (d)(7). The currently proposed definition fixes the scope of the service information that has to be made available to aftermarket facilities by heavy-duty engine manufacturers. This new definition is far more limited than the similar definition for light- and medium-duty vehicles in subsection (d)(7). The light-duty definition tracks the language of Senate Bill 1146. However, the information that must be provided for heavy-duty engines veers sharply from the statutory requirements. First, the light-duty definition requires that information on all systems "associated with the powertrain system" be provided whereas the heavy-duty definition limits aftermarket availability only to information on all systems "associated with the engine system." Moreover, the heavy-duty definition specifically excludes information related to the transmission system. Second, the requirement in the light-duty definition that any information related to "[a]ny original equipment system or component that is likely to impact emission, including but not limited to, the transmission system" has been entirely deleted. The effect of these two changes is to limit the access of aftermarket facilities to non-engine systems and parts, particularly the transmission system, and will prevent them from making emissions-related repairs that result from problems with those parts or systems. (AAIA)

   Agency Response: Also see agency response to comments #6-7. In the staff report, staff proposed the addition of a new definition for "emission-related engine information" in 13 CCR section 1969(d)(9). This was necessary because portions of the existing definition for "emission-related motor vehicle information"

in 13 CCR section 1969(d)(8) are not applicable to heavy-duty engines. Specifically, heavy-duty transmission information was deleted from the new definition because such information is not under the purview of engine manufacturers.

Nonetheless, during the course of the rulemaking process, the aftermarket industry argued that the narrower definition limited the aftermarket's ability to access desired transmission information and put independent service facilities at a competitive disadvantage to franchised dealerships and service networks when it came to repairing transmission-related problems. After much discussion with engine manufacturers and the aftermarket industry, staff decided that engine manufacturers must make transmission diagnostic and repair information available if they elect to read transmission inputs as part of their OBD strategy. By choosing to use transmission inputs in its OBD strategy, the engine manufacturer would have information on how to monitor and detect specific transmission malfunctions. To properly address such detected malfunctions, the engine manufacturer and its dealership franchises or service network would need to have access to transmission repair information so that the transmission could be repaired and the vehicle's malfunction indicator light extinguished.

Staff concluded that engine manufacturers, having provided such information to their franchises or service networks, would be in the best position to provide such information to independent service facilities and aftermarket parts manufacturers. This would eliminate the need for ARB to directly regulate transmission manufacturers, which it historically has not done, and to require transmission manufacturers to incur the costs of maintaining websites for making their information available.

On the other hand, if an engine manufacturer does not require the use of transmission inputs as part of its OBD strategy and does not otherwise provide transmission information to their franchises or service network, they would not be required to make transmission information available to the aftermarket.

Staff proposed these additional amendments at the June 22, 2006, hearing. They were further refined in the 15-Day Change Notice to require the availability of OBD-related transmission information beginning in the 2007 model year, with the corresponding repair information to be provided by the 2010 model year. Further discussion regarding heavy-duty transmission information is provided later in this document under the heading "HEAVY-DUTY TRANSMISSIONS."

9. Comment: We would like to see a special definition for covered person for heavy-duty purposes that clearly identifies qualified heavy-duty service providers in the rule. (EMA)

10. Comment: ARB must revise the definition of "covered person" to ensure that unqualified providers may not obtain access to heavy-duty information. The current definition would allow any person or entity in the business of service or

repair of light- or heavy-duty vehicles, engines, or transmissions to have covered person status even if they are unqualified to perform heavy-duty repairs. ARB must include some threshold qualification for becoming a "heavy-duty covered person" that will ensure at least some measure of competence in repairing heavy-duty engines. Moreover, an entity's ability to access information by virtue of being a covered person should be limited to their area of competence. EMA proposes language that creates separate tests for determining appropriate covered person status and ensures that light-duty entities cannot claim covered person status with respect to heavy-duty service repair if they are not engaged in, or do not have any expertise in the area of, heavy-duty service repair. (EMA)

11. Comment: The principal "covered person" for heavy-duty service information needs to be the vehicle's owner and qualified repair facilities. Mechanic training and certification by Automotive Service Excellence (ASE) recognizes specialties for heavy-duty vehicles and diesel engines. Some post-secondary vocational schools offer programs in heavy-duty diesel engine repair. Heavy-duty service training literature legitimately assumes these specialty qualifications, and further assumes mechanics routinely obtain commercial driver's licenses, in order to conduct road tests of repairs. (TMA)

    Agency Response to Comments #9-11: ARB did not modify the existing definition of "covered person" to require that specific qualifications be met before heavy-duty service information is made available for purchase. ARB is not authorized under California law to regulate the practices of such heavy-duty service facilities or determine the qualifications of heavy-duty repair technicians. Moreover, directly regulating access to information based on skill level of technicians would be resource intensive and difficult to uniformly and fairly administer.

    Instead of modifying the definition of covered person, ARB addressed the issue of misuse or abuse in the area of greatest concern to engine manufacturers – the misuse or tampering of heavy-duty tools by independent technicians. (See Response to Comments #3-5 and the "HEAVY-DUTY TOOLS" section below.) In this regard, ARB has allowed engine manufacturers to require appropriate training before their enhanced diagnostic and recalibration tools are offered for sale. Engine manufacturers may also sell their data stream, bi-directional control and recalibration/reconfiguration information under licensing agreements that relieve them of liability resulting from damage caused by aftermarket tools that is not attributable to the data provided by the engine manufacturer.

COSTS

12. Comment: EMA is not asking just for year-long subscriptions. However, there needs to be some flexibility when you're looking at the subscription periods. (EMA)

13. Comment: TMA believes that ARB should agree to a future review on heavy-duty service information subscription sales, for the purpose of assessing the benefits to covered persons versus the cost to provide those benefits. An initial assessment of light-duty subscription sales suggests that heavy-duty service information websites will not meet typical business investment guidelines for cost-effective use of business capital. The order of magnitude difference in sales volumes of heavy-duty vehicles compared to light-duty vehicles, plus the very large numbers of vehicle/engine combinations that are offered, greatly increases the per vehicle/engine cost of providing this information for heavy-duty vehicles. (TMA)

    Agency Response to Comments #12-13: Engine manufacturers will experience costs related to the conversion of text-based service information for viewing on the Internet, as described in the staff report. However, Internet availability is one of the main requirements specified by SB 1146. Although initial subscriptions to heavy-duty service information websites may be initially perceived as low, this may be attributable to covered persons' lack of familiarity with the use of the Internet for accessing needed repair information. It is currently too early to determine if subscriptions would remain low in the future.

    ARB believes that a range of website subscription options must be available for light- and medium-duty and heavy-duty service information. In contrast to the federal service information rule, which requires manufacturers to make daily, monthly, and yearly subscriptions available, ARB does not delineate what this range should be. Unlike franchised dealerships, many independent service facilities work on multiple brands of heavy-duty engines, which make the purchase of yearly website subscriptions for all brands that they service impractical and/or very costly. These facilities would most likely purchase daily or monthly subscriptions, if available, to cover their less popular engine brands while obtaining yearly subscriptions only for the engine manufacturers that they service regularly. Although not requiring that manufacturers to make all subscription options available, ARB will review, on a case-by-case basis, whether offering fewer subscription periods would be "fair, reasonable and nondiscriminatory." For example, ARB may allow a manufacturer to offer just a single subscription option to covered persons if it is able to demonstrate that the cost of a yearly subscription to its website would be comparable to the rates that a competitor charges for monthly or daily subscriptions.

14. Comment: The costs of the proposed regulation for heavy-duty service information far outweigh its benefits. Engine manufacturers already make service information and tools available to the independent service industry. ARB has proposed to apply heavy-duty requirements that would require complex, substantial, and time-consuming changes in the current heavy-duty service information infrastructure. ARB staff suggests that engine manufacturers can recover costs related to compliance with the regulation. However, based on the low sales volumes in the heavy-duty industry (1/40th of light-duty sales) and the

number of independent service facilities, engine manufacturers cannot recoup those costs. (EMA)

Agency Response: See Response to Comments #1-2. The costs related to making both text-based service information and tools for heavy-duty engines available to covered persons have been estimated in ARB's December 5, 2003, and May 5, 2006, staff reports. In both cases, they are not net costs in that they do not account for any revenue that may be generated from the sale of information and tools. Whether or not an engine manufacturer can recover some or all of its costs is dependent on many factors. These include the volume of information that needs to be converted for online viewing/downloading, the popularity of certain engine models, and the number of online users. However, the bulk of the costs are attributable to start-up costs that may be offset over time with more manageable maintenance costs as both engine manufacturers and users become more familiar with the Internet environment.

COMPLIANCE FLEXIBILITY

15. Comment: We do support the compliance flexibility provisions that allow engine manufacturers to use the light- and medium-duty service information requirements for heavy-duty engines or the heavy-duty service information requirements for medium-duty engines when a manufacturer produces engines that are used in more than one weight category, but we don't support the requirement that would require cross referencing of the terminology used in the two different rules. (EMA)

16. Comment: The one issue we had there was the requirement to cross reference terminology. We don't think that's necessary. We think that's done to a great degree already in the SAE documents. Plus there's knowledge the service providers have that this seems to be really unnecessary, that aspect of the compliance flexibility provision that was added in the 15 day. (EMA)

Agency Response to Comments #15-16: In the 15-Day Notice, staff deleted the requirement for engine manufacturers to provide cross-reference information that intended to help covered persons understand service information nomenclature used for engines under the optional compliance provisions detailed in 13 CCR section 1969(b). The purpose of this requirement was to allow heavy-duty technicians to better understand medium-duty acronyms and abbreviations, and vice-versa. However, staff determined that the currently incorporated documents in the regulation, SAE J1930 and SAE J2403, are adequate for this purpose. SAE J2403 applies to both medium- and heavy-duty engines, and was based on the nomenclature contained in SAE J1930. Therefore, a technician in possession of both of these documents should not experience major difficulty in comprehending the terminology used for either engine class.

17. Comment: Another issue that needs to be addressed is the second sentence of section 1969(b)(2) regarding implementation dates. I understood it to say that

even if a manufacturer of an engine used in medium-duty vehicles elected the heavy-duty option, that the implementation date would stay the same (i.e., it would be the implementation date for light- and medium-duty vehicles. This is because that information is currently available and should not now be withdrawn. However, (b)(2) states that the implementation date is the one applicable to engine manufacturers not motor vehicle manufacturers, exactly opposite of my understanding. This is not correct and should be changed. The same situation occurs in section (b)(1). (HVMG)

Agency Response: Staff agreed with the commenter's need for clarification in 13 CCR sections 1969(b)(1) and 1969(b)(2), and subsequently modified the language as suggested in the 15-Day Notice. The implementation dates in the service information regulation should be consistent with the requirements based on the vehicle category, not the installed engine. Doing so will also prevent confusion in determining compliance with other ARB provisions applicable to the vehicle/engine, such as certification requirements and OBD.

18. Comment: I have a concern about use of the phrase "emission-related motor vehicle and engine information" in the third and fourth lines of Section 1969(e)(1) because that combined term is not defined. I suggested that it be replaced with "emission-related motor vehicle information and emission-related engine information" because those two terms are defined. (HVMG)

    Agency Response: Staff agrees with the commenter's need for clarification in the combined term used in 13 CCR section 1969(e)(1), and subsequently modified the term in the 15-Day Notice as suggested.

19. Comment: ARB must revise the compliance flexibility provisions in 13 CCR section 1969(b)(2) to state that diesel-fueled engines are covered in addition to diesel-derived engines. (EMA)

    Agency Response: To reduce confusion as to which fuels are covered under section 1969(b)(2),staff added a definition for "diesel-derived engine" in the 15-Day Notice, The term, which is set forth at 13 CCR 1969(d)(7) provides:

    "Diesel-derived engine' means an engine using a compression ignition thermodynamic cycle and powered by either diesel fuel or alternative fuels such as liquefied petroleum gas or compressed natural gas."

20. Comment: The language in 13 CCR section 1969(b)(1) should be modified to delete the term "gasoline-derived." Under the optional compliance provisions, manufacturers of heavy-duty diesel engines must also be allowed to comply with the light- and medium-duty service information requirements for the same standard and industry practice reasons applicable to similar gasoline-derived engines. There is no disadvantage to providing this additional flexibility. (EMA)

Agency Response: Staff agrees with the commenter's recommendation that the term "gasoline-derived" be deleted from 13 CCR section 1969(b)(1). The term was deleted in the 15-Day Notice as suggested.

HEAVY-DUTY TOOLS

21. Comment: Engine manufacturers already make their tools and information available to anyone who wishes to purchase them yet there is no great demand for them. (EMA)

22. Comment: This rule is going to require manufacturers to incur significant costs to develop websites and significant costs to reengineer their tools. Manufacturers will have to reengineer their software and delivery systems to make these tools available to third parties. (EMA)

23. Comment: Engine manufacturers don't anticipate any increased demand for those tools. This is in contrast to information that we have received from the light-duty industry in which two light-duty vehicle manufacturers have indicated that their monthly and yearlong service subscriptions over their websites total about 300 nationwide. If you apply that and then take the California numbers in the heavy-duty industry, that would be about one subscription per year. So while some elements of this proposal might make some aspects of heavy-duty tools more available on balance, the cost of this proposal do and far outweigh its benefits. Our concern is that all subscribers are going to end up having to pay more for the same information. (EMA)

    Agency Response to Comments #21-23: See agency response to comments #1-2 and #14. ARB has determined, based on comments received from tool and equipment companies, that there is a significant need for heavy-duty tools and information. This need will only increase upon implementation of OBD systems on heavy-duty engines, which will require the use of diagnostic and recalibration tools for respectively detecting emission-related problems ensuring that manufacturer-prescribed engine settings are maintained. The costs associated with modifying these tools and/or software for use by the aftermarket industry are expected to be as high as $1.5 million per engine manufacturer initially followed by $70,000 in annual maintenance costs thereafter. However, these enhanced tools are not required to be made available until the 2013 model year so engine manufacturers will be able to spread the initial compliance over the next six model years.

24. Comment: The proposed regulation requires that, except for tools that may be currently available to the aftermarket, no enhanced diagnostic, recalibration, and reconfiguration tools have to be made available to the aftermarket until the 2013 model year. However, there is no justification for the delay. Engine manufacturers will be permitted to require training before making such tools available, and the tools are already accessible to franchised dealerships and authorized service networks. Therefore, we urge the Board to give all covered

persons full and immediate access to all tools available to franchised dealers and authorized service networks, subject to undergoing the required training. (AAIA)

Agency Response: The intent in requiring engine manufacturers' enhanced tools beginning with the 2013 model year was to tie the requirement to the standardization of communication protocols that are required under the heavy-duty OBD regulation. Lead time is needed to redesign tools and/or software to not only comply with these protocols but to ensure that the tools can be safely used by covered persons, which should allow engine manufacturers to reduce their liability exposure. The training option in the regulation will also begin with the 2013 model year to complement and enhance the security of the redesigns. The option for earlier availability of tools and training is not offered because current enhanced tools are very powerful in terms of their diagnostic and recalibration/reconfiguration capabilities when compared to light- and medium-duty tools. It is felt that training alone, prior to the 2013 model year, would not likely lessen the likelihood of tampering or miscalibration of vehicles, and consequent safety concerns. It is only with the redesign of the tools that these concerns can be alleviated.

25. Comment: The proposed regulation addresses our concerns about tool training. Although we still believe that the six-month timeframe for providing training is too long and the requirement that the training be anywhere in California is not geographically limited enough, we are not asking for any changes in these requirements. However, we will strongly oppose any change to the training requirement that would increase the time when, or enlarge the geographical area where, the training must be given. (AAIA)

26. Comment: ARB must revise the heavy-duty tool training provisions to remove the condition to provide training in a minimum of one California location. This is not reasonable and it imposes unnecessary and additional cost burdens. California-specific training would require engine manufacturers to rent classroom space, and ship engines, equipment, and trainers to this location. Engine manufacturers require their own authorized service networks to attend training at centralized training centers outside of California, so special arrangements should not need to be made for aftermarket service providers. (EMA)

27. Comment: Manufacturers are allowed to require training, and we support that. But one of those conditions that would require training in California locations we don't support. Manufacturers currently provide training in centralized locations. So asking them to set up specific special California locations that they don't otherwise make available to their authorized service network is asking again for special treatment for the independent service industry. That's not the intent of the proposed rule as we understood it. And it's going to create a lot of costs, including cost of traveling, costs of having to find locations, cost of shipping equipment, and engine demonstration and whatnot. (EMA)

Agency Response to Comments #25-27: In regards to heavy-duty tool training, it was important for staff to balance engine manufacturers' request for training with the aftermarket's accessibility to it. The decision to require a minimum of one California training location was based on the premise that the tool training be somewhat convenient and not overly burdensome to covered persons. This was the primary reason the aftermarket industry conceded to the heavy-duty industry's request for training requirements. The aftermarket industry is comprised of many varying entities (e.g., both large, chain franchises and small "mom and pop" service shops) that may or may not have the necessary resources to travel to training facilities outside of California. Additionally, authorized service networks, many of these independent shops service several engine brands thereby making it impractical economically to travel all across the country to attend various manufacturers' training classes at multiple locations. Therefore, it was reasonable to specify minimum accessibility conditions for any training required by an engine manufacturer of covered persons. While there will be costs to some engine manufacturers resulting from setting up a California training facility, staff believes that some of these costs may be recovered through the enrollment fees charged for the training classes.

Staff is also keeping the requirement for engine manufacturers to offer their tool training within six months after a request has been made. Staff determined that this is a reasonable timeframe and would not be overly burdensome for an engine manufacturer to fit within its existing training schedule.

INDEMNIFICATION LANGUAGE

28. Comment: On the liability issue, heavy-duty tools are powerful. We're concerned about misuse. And we want to make sure that the liability provisions clearly establish that engine manufacturers are not going to be liable for the use of their tools and the use of third party tools. (EMA)

29. Comment: ARB must include language that specifically limits engine manufacturers' liability for use of tools by covered persons. Engine manufacturers have control over potential misuse by their authorized dealers, but not over third parties. Heavy-duty tools are very powerful due to their capability to recalibrate and reconfigure engines. So even with training, independent service facilities that service several makes of engines may have less specialized knowledge of the tools and be more likely to make mistakes than a dealership that services engines from a single manufacturer. There is also concern about the tools sold by tool and equipment companies without providing ultimate purchasers with appropriate training on the correct use of the tools. Typically, the engine manufacturer has no direct relationship with users of tools from these companies and, thus, has no opportunity to provide training to avoid the occurrence of accidental or deliberate misuse of those tools. Therefore, ARB must include specific language in the regulation that confirms that engine manufacturers will not be held liable for the use and misuse of third-party tools or

for any damage cause by their own tools at the hands of independent service facilities. (EMA)

30. Comment: We would like the indemnification requirement to be removed from the regulation. We are not aware of any examples in the last 25 years where the actions of a scan tool company have caused liability to a vehicle or engine manufacturer. Also, any manufacturer that requires a contract to receive data stream information includes an indemnification clause almost automatically as part of contract boilerplate. Lastly, there is nothing in the regulation that prevents a vehicle or engine manufacturer from adding an indemnification clause to their contract with a scan tool company. Our concern is that manufacturers will see this new clause as a requirement. Currently only four of approximately 25 light-duty manufacturers require any kind of contract. If this number goes up, it will really slow down the process of getting information into aftermarket tools. We would like this clause removed, but if it must be included, we recommend that there be something placed in staff comments that it was not added because of any existing problem and that no case has ever been brought before the Executive Officer concerning the misuse of data stream information by aftermarket tool manufacturers. (ETI)

31. Comment: We are concerned about the new indemnification language added to the two sections which require information to be given to generic tool manufacturers. We agree that the vehicle and engine manufacturers should not be liable for the errors of the tool manufacturers. However, by emphasizing an indemnification requirement in the regulation, we believe that this may make it more difficult for the tool manufacturers to get information and may have a chilling effect on their desire to produce these tools. Either effect would limit the generic tools which would be available to the aftermarket and hurt those smaller businesses which could not afford to purchase numerous enhanced tools. Therefore, we would request that this language be deleted. (HVMG)

    Agency Response to Comments #28-31: The addition of indemnification language in the 15-Day Notice was a result of discussions with engine manufacturers prior to the June 2006 Board hearing. Their concern about possible misuse of their data stream and bi-directional control information in aftermarket tools was reasonable and therefore, staff proposed language in 13 CCR section 1969(h)(2)(C) that would allow them to draw up business agreements with tool companies relieving engine manufacturers of liability resulting from damage caused by these tools unless it was related to the data itself. Similar language was included in 13 CCR section 1969(g)(2) for consistency with regards to the availability of light- and medium-duty tool information.

    It is important to note that staff did not include this language because of existing problems with aftermarket tools that use this information, but rather to clarify the extent of an engine manufacturer's responsibilities for its tool information when selling it to a covered person. Furthermore, the indemnification provision is

presented only as an option and should not make it more difficult to purchase tool information. Finally, it should be noted that engine manufacturers could impose similar contractual conditions even in the absence of such language in the service information regulation.

As mentioned earlier, staff is making non-substantive changes to both 13 CCR section 1969(h)(2)(C) and section 1969(g)(2) to correct an improper subject-verb agreement: (Below is the modified language in 13 CCR section 1969(h)(2)(C) only; the same change will be made to 13 CCR section 1969(g)(2).)

> "An engine manufacturer may require, as a condition of sale of its tools, that the business agreement contain indemnity or "hold harmless" clauses that relieve the engine manufacturer from damage caused by tools produced by the tool and equipment company that ~~are~~ is otherwise not attributable to the data provided by the engine manufacturer."

HEAVY-DUTY TRANSMISSIONS

32. Comment: There are some provisions in the transmission [sic] regulations that just seem very difficult to comply with because a transmission manufacturer isn't required to sell service information for redistribution by the vehicle manufacturer as far as I know. And I see that as a potential barrier. (TMA)

33. Comment: Most transmission manufacturers face their service channels and their constituents directly, not under the osmosis of engine supplier, nor in most cases through the osmosis of the vehicle manufacturers. We provide and have a history of providing service information directly to those people who have an interest in using it. And it is largely consistent with the information we provide to authorized service channels. (Allison Transmission)

Agency Response to Comments #32-33: When the regulation was first amended in 2004, heavy-duty transmission manufacturers were required to make available emission-related service information for heavy-duty engines. However, this did not prove to be practical because transmission manufacturers are not involved in ARB's process for emission certification of heavy-duty engines. Due to the non-vertical integration of the heavy-duty industry, engines are typically sold without a transmission and, thus, are emission tested without one. Also, transmission manufacturers are not required to explicitly comply with any other ARB regulation. Recognizing this, staff has concluded that heavy-duty transmission manufacturers should not be subjected to the provisions in the service information regulation, and proposed that such requirements be deleted from the regulation.

Instead, staff proposed in the 15-Day Notice that engine manufacturers be required to make specific transmission-related diagnostic information available if they elect to read transmission inputs as part of their OBD strategy. Further, it proposed that repair information needed to correct such malfunctioning

transmissions also be made available. Initially, transmission manufacturers, not engine manufacturers, were specified to make this information available despite the arguments described above because of concern about engines not being able to be repaired at independent repair shops and also because engine manufacturers do not have any corporate control over this transmission information. However, staff ultimately determined that engine manufacturers were in the best position to collect and make the information available. See ARB's response to Comments #34-37 below. See also response to Comment #8.

34. Comment: The rule must require heavy-duty engine manufacturers to supply engine service information, not transmission information. EMA opposes the change that ARB is suggesting in its additional amendments to the original proposal. We had numerous discussions with staff including discussions with the aftermarket which we explained why it wasn't appropriate to require engine manufacturers to provide transmission information. Staff agreed. They proposed an approach we supported, and now they've done a turnabout. (EMA)

35. Comment: Engine manufacturers produce engines, not transmissions. And they can't provide information over components over which they have no control. They don't have that information at their fingertips, and they don't otherwise provide it to their authorized networks. The way this language is -- we've looked at it. We've only had a day to look at it really -- to start looking at it. Is that it would require that information to go out to the aftermarket regardless of whether we provide it to our authorized networks. (EMA)

36. Comment: I don't believe there is that information gap to the extent staff may believe there is. My understanding is that if that kind of a fault were to show up, that it would direct that it would be a transmission issue that needed to be repaired. But an engine manufacturer is not going to know the nature of that repair. (EMA)

37. Comment: Engine manufacturers should be responsible to provide only emission-related engine service information, and not transmission information as proposed by staff. The engine manufacturer, in most cases, has no control over what transmission an engine is paired with or what transmission information is available. Engine manufacturers do not and cannot provide information for components for which they have no control. At most, engine manufacturers may use input from a transmission to enable a diagnostic. If that input fails, the engine will report a signal that the input has failed. However, engine manufacturers have no access to where the fault may be located, the cause of the fault from the input, or how the failure may be repaired. Moreover, engine manufacturers provide no such information to their service providers. (EMA)

Agency Response to Comments #34-37: See ARB response to Comment #8. To maintain consistency with the existing service information and OBD regulations, the amended regulation requires engine manufacturers to make heavy-duty

transmission information available to covered persons. Presently, engine manufacturers are required to produce OBD systems that monitor inputs from various sources on the engine and/or vehicle and to provide service information to diagnose and repair malfunctions detected by the OBD system. If one of these inputs is from the heavy-duty transmission monitor that is connected to the engine pursuant to 13 CCR 1969(e)(2), the engine manufacturer, consistent with the above, should be required to make available all OBD diagnostic information related to the operation, enabling conditions, trouble codes, etc. related to said monitor.

Engine manufacturers are also required to make heavy-duty transmission repair information needed to clear those trouble codes and extinguish the malfunction indicator light available to covered persons even though they may not own or control such information since it is the intellectual property of the actual transmission manufacturer. As stated in the 15-Day Notice issued on November 30, 2006, staff's is placing the burden of transmission-related information on the engine manufacturer because it is:

> "…the party most in control of obtaining and making available to covered persons service and repair information that it provides to its franchised dealerships and authorized service networks. If such information were not provided to covered persons, they would be in a distinct disadvantage in servicing malfunctioning transmission-related diagnostics, which could result in operators of heavy-duty vehicles not choosing independent service facilities when the malfunction indicator light illuminates."

While it is true that ARB initially was inclined to remove all requirements for the availability of heavy-duty transmission information due to the history of not regulating transmission manufacturers, subsequent discussions with the aftermarket industry revealed that the discriminatory effect described above would be contrary to the intent of the service information regulation, the stated purpose of which is to provide equity in the vehicle service and repair industry. Accordingly, staff determined that, without imposing direct responsibility on transmission manufacturers, it was appropriate to require engine manufacturers that elect to use transmission inputs as part of their OBD strategies to make available necessary transmission-related information. In doing so, staff made it clear that engine manufacturers need only make such information available only if they also make the information available to their franchised dealerships and authorized service networks. As stated, in such situations, the engine manufacturers are in the best position to provide information to covered persons at the least cost. The requirement is also fully in keeping with the primary purpose of SB 1146 that the aftermarket industry not be placed at a discriminatory, competitive disadvantage.

15-DAY NOTICE MODIFICATIONS

38. Comment: The term “diesel-derived” defined in 13 CCR section 1969(d)(7) is problematic in that it would exclude from the compliance flexibility provisions of 13 CCR section 1969(b)(2) alternative-fueled engines that are derived from compression-ignition cycle engines but that operate on a spark-ignition cycle. Therefore, EMA recommends that ARB delete the phrase “diesel-derived” from 13 CCR section 1969(b)(2) and also delete the proposed definition of “diesel-derived.” In the alternative, ARB could opt to revise both sections 1969(b)(2) and 1969(d)(7). In that regard, ARB would need to add the words “diesel or” before “diesel-derived” in (b)(2) and revise the definition of “diesel-derived” in (d)(7) as follows:

> (7) “Diesel-derived engine” means an engine ~~using~~ derived from a parent engine that uses a compression-ignition thermodynamic cycle and has been modified to be powered by either any combination of diesel fuel or alternative fuels such as liquefied petroleum gas or compressed natural gas.

A final option is to revise (d)(7) as follows:

> (7) “Diesel-derived engine” means an engine using a compression-ignition thermodynamic cycle and powered by ~~either~~ of diesel fuel or an engine that has been derived from a parent engine that uses a compression-ignition thermodynamic cycle and has been modified to be powered by any combination of diesel fuel or alternative fuels such as liquefied petroleum gas or compressed natural gas. (EMA)

Agency Response: The compliance flexibility provided in 13 CCR section 1969(b)(2) is intended to give engine manufacturers that produce both medium- and heavy-duty diesel-derived vehicles the option to make their service information available on under either the requirements for light- and medium-duty vehicles or the requirements for heavy-duty engines. Staff proposed the provision to provide engine manufacturers flexibility and to maintain consistency with the OBD II regulation, which also allows engine manufacturers of both medium- and heavy-duty diesel engines to elect to comply with just the heavy-duty OBD standardization requirements. However, the OBD II regulation (13 CCR section 1968.2(g)(7)(7.1)) limits this flexibility to heavy-duty diesel engines only. All medium-duty vehicles equipped with a spark-ignition engine are currently required to comply with the OBD II provisions and cannot alternatively elect to comply with the heavy-duty OBD requirements.

EMA’s proposal seeks to broaden the flexibility provisions beyond that intended by the heavy-duty OBD regulation. Its proposal would allow engine manufacturers of spark-ignited, medium-duty vehicles to use the less stringent heavy-duty service information requirements, including requirements that OBD descriptions be made available, for spark-ignition engines installed in medium-duty vehicles. This would not be acceptable because it would effectively

allow engine manufacturers to potentially delay the availability of diagnostic, recalibration, and reconfiguration tools until training is taken by covered persons. It would also allow recalibration and reconfiguration methods to be performed pursuant to heavy-duty, rather than medium-duty, methods. Lastly, the availability of transmission-related service information would be limited to OBD-related repairs. Considering that spark-ignited, medium-duty vehicles are usually serviced by light- and medium-duty service technicians for which such restrictions are not permitted, an allowance to broaden the flexibility provision to alternate-fuel, spark-ignited engines would adversely affect the independent service industry. For the above reasons, staff has determined that the existing definition for "diesel-derived engine" and its use in subsection (b)(2) of the service information regulation should remain consistent with the similar provision in the OBD II regulation and should not be modified.

39. Comment: EMA recommends that ARB revise the reference in 13 CCR section 1969(h)(1)(B) to add the Technology and Maintenance's (TMC's) Recommended Practice RP1210B approved draft in addition to the existing RP1210A reference. Until RP1210B has been finalized by TMC, it should not fully replace RP1210A as the referenced standard but it should be included in the regulation. (EMA)

    Agency Response: Staff agrees that the current reference in the service information regulation to RP1210A, a recommended practice for a standardized recalibration communication interface with heavy-duty engines, should be updated once the finalized version is officially approved by TMC. Since the current RP1210B document is only a balloted version, it is not appropriate to incorporate it into subsection (h)(1)(B) at this time. However, once TMC officially approves RP1210B, staff intends to request a modification of the reference in the service information regulation pursuant to 1 CCR section 100. Under this provision, this modification would be made without the need for a formal Board hearing because it does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element in the regulation. RP1210B is backward compatible with RP1210A and contains two significant changes: the deletion of support for the obsolete Windows 3.1 operating system and the addition of ISO 15765 protocol for diagnostics associated with controlled area networks. Such protocol is in line with that is to be used in conjunction with heavy-duty OBD systems.

40. Comment: The language that ARB staff has proposed in its 15-Day Notice for the availability of heavy-duty transmission information (13 CCR section 1969(d)(9)(B)) does not take into consideration the drastically different nature of the horizontally-integrated heavy-duty business environment and, thus, establishes discriminatory requirements among transmission manufacturers. ARB should subsequently consider the differences between the heavy-duty industry and the light-duty industry. Therefore, EMA recommends that ARB revise the definition of "emission-related engine information" as follows, or making other appropriate changes to the regulatory language: "Where a transmission from a manufacturer is assembled with engines from other

manufacturers, transmission information must be provided to covered persons only if that information is also provided to another third party engine manufacturer's service network." (EMA)

Agency Response: Staff realizes that the heavy-duty industry is not as closely integrated as the light- and medium-duty industries when it comes to the construction of complete vehicles. Consequently, at times, there is little interaction or sharing of information between engine manufacturers and transmission manufacturers. Nevertheless, this situation does not negate the need of independent service technicians for repair information that is needed to clear the malfunction indicator light and/or trouble codes due to a transmission-related fault. This is especially true when these technicians cannot compete equally with a franchised dealership or service network when an engine is brought into their shop for repair. Although an engine manufacturer may not own or control the transmission repair information used in conjunction with its engine, it should know what basic information is needed to clear the trouble codes since it is the responsible party for the design of the OBD system. If the fix requires more detailed transmission repair information, and the engine manufacturer provides that information directly to its dealers or authorized service networks, then subsection (e)(1) (which is referenced in subsection (d)(9)(B)) requires that it also be provided to covered persons.

A dedicated engine manufacturer can be relieved of making this repair information available to covered persons by requiring its dealers and service networks to obtain the information from the applicable transmission manufacturer rather than itself, but an engine manufacturer that also produces heavy-duty transmissions is not afforded this option because the information by default would be owned by the engine manufacturer and would be provided to its dealerships and authorized service networks. While there is a different level of compliance between these two categories of engine manufacturers, the difference is consistent with the requirements of SB 1146 and also with ARB's regulatory history of dealing with transmission manufacturers.

The language that was proposed by EMA is in reference to engine manufacturers that also produce heavy-duty transmissions, but is not satisfactory because it only accounts for transmission repair information that is made available to another engine manufacturer's service network and not its own. Consequently, the language would discriminatorily affect covered persons because they would not have access to the transmission repair information that the engine/transmission manufacturer is providing to its dealerships and authorized service networks.