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Summary and Analysis of Comments: Service Information Availability

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Certification and Compliance Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency

SECTION 1: Definitions

1.1 Summary of Proposal

EPA proposed definitions that are applicable to sections 86.094-38 and 86.1808-01 of the regulations. Following is this list.

(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 two communication wires. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration related information.

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

(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.

Emissions-related information includes, but is not limited to:

(*1*) Manuals, including subsystem and component manuals, technical service bulletins (TSBs), recall service information, diagrams, charts, and training materials;

(*2*) OBD system operational information that describes functional characteristics of the OBD system and emission-related components. OBD system operational information includes, but is not limited to, OBD generic drive cycle information, component operating ranges, and system logic flow diagrams. Algorithms, look-up tables, or any values associated with look-up tables are not required to be made available;

(*3*) Emission-related diagnostic procedures. Manufacturers who utilize their manufacturer-specific scan tool to provide emissions-related diagnostic procedures cannot require connection to the vehicle to access this information. Additionally, manufacturers shall also make any emissions-related diagnostic procedures incorporated into their manufacturer-specific scan tools available to aftermarket service providers on their respective manufacturer Web sites;

(*4*) 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);

(*5*) 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)

(*6*) Information needed to start the vehicle when the vehicle is equipped with an anti-theft system or other systems that disable the engine and prevents it from starting after the completion

of an emissions-related repair; and

(*7)* 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.

(F) Enhanced service and repair information means information which is specific for an original equipment manufacturer's brand of tools and equipment.

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

(H) 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).

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

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

(K) 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.

(L) 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.

1.2 Summary of Comments

1.2.1 Definition of "Aftermarket Service Provider"

At the July 25, 2001 public hearing, the Automotive Parts Rebuilders Association (APRA) and the Automotive Engine Rebuilders Association (AERA) commented that EPA did not clarify that engine rebuilding falls within the definition of service and repair, nor did EPA acknowledge that rebuilders are repairing or servicing motor vehicles or motor vehicle engines. APRA and AERA commented that EPA would not be inappropriately broadening the scope of the service information statute by specifically including ECU rebuilders. APRA and AERA further commented that, while rebuilding an ECU is generally a more sophisticated repair, it is a repair nonetheless because its purpose is to make a malfunctioning part work properly again. AERA and APRA are particularly concerned that, unless EPA makes it clear that rebuilders fall within the group entitled to OEM service and repair information, they will be denied access to service information. AERA and APRA commented that EPA should add language to the final rule specifying that engine and parts rebuilders fall under EPA's proposed definition of "aftermarket service provider."

The Motor and Equipment Manufacturers Association (MEMA) also commented at the July 25, 2001 public hearing on this issue. MEMA commented that there appears to be an inconsistency between the broad grant of access discussed in the preamble, and the actual terms of the proposed rule. MEMA is concerned that EPA's proposed definition of "aftermarket service provider" may limit the available information for parts manufacturers. MEMA acknowledges that this rule is not designed for aftermarket parts manufacturers. However, given the broader goal of the rule to ensure that emissions-related repair is widely available, MEMA commented that EPA should ensure that aftermarket parts manufacturers can also obtain access

to the service and repair information required by the proposed rule. Therefore, MEMA commented that the proposed definition of "aftermarket service provider" should be amended to define an aftermarket service provider as "any individual or businesses engaged in the diagnosis, service, and repair of a motor vehicle or engine, ***or any business which supplies goods or services to such businesses*** (emphasis added), and who is not directly affiliated with a manufacturer or manufacturer franchised dealership." Written comments were received from a consortium of the automotive aftermarket industry on behalf of the Motor and Equipment Manufacturers Association (MEMA), Automotive Aftermarket Industry Association (AIAA), the Automotive Engine Rebuilders Association (AERA), Automotive Parts Rebuilders Association (APRA) and the Heavy Vehicle Maintenance Group (HVMG) ("the Aftermarket Consortium"). These comment reiterated the comments of MEMA regarding the definition of "aftermarket service provider."

In their written comments, the Alliance and AIAM commented extensively on expanding the list of "covered parties" to include equipment and tool manufacturers, parts manufacturers and parts rebuilders. The Alliance and AIAM commented that expanding EPA's list beyond "any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines" as it appears in section 202(m)(5) of the Clean Air Act would exceed EPA's authority.

Regarding the rebuilding of ECU's, the Alliance and AIAM commented that this procedure is not part of vehicle service and repair. Generally, shops that service and repair vehicles do not rebuild ECUs or other parts as part of their service. They further commented that parts rebuilders is a separate and distinct business from service and repair providers and the rebuilt parts compete with other new aftermarket or OEM parts.

The Alliance and AIAM also commented that their dealerships are not provided the information rebuilders seek so there is no reason for EPA to conclude that this information is necessary for repair or service of vehicles. Additionally, they commented that changing the definition set forth in the Clean Air Act would be arbitrary and Congress, EPA, and various courts have already determined that the intent of this Clean Air Act requirement is intended for service and repair facilities, not parts manufacturers. Any change would undermine the intent of the Clean Air Act provision.

The National Automobile Dealers Association (NADA) also commented on this issue at the July 25, 2001 public hearing. NADA commented that a definition of aftermarket service provider is not found in the 1995 regulations and for good reason. While the Clean Air Act statute itself refers to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, NADA commented that by using a term such as "aftermarket service provider" throughout the proposal fosters an unnecessary and unproductive "we vs. them" atmosphere. NADA commented that the final rule should not contain any reference to "aftermarket service providers" and should be drafted in a manner that reflects the broadly neutral language and intent of the statute.

1.2.2 Definition of "Equipment and Tool Company"

The Equipment and Tool Institute (ETI) commented that EPA should include a definition for an equipment and tool company. ETI recommended the following language:

> *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.*

BMW commented that clarification is needed from EPA as what it means by "aftermarket scan tool manufacturer" in section (g)(11)(vii) and the term "equipment and tool companies" in section (g)(12). BMW was unsure if these terms refer to the same entities or imply that different organizations are involved.

1.2.3 Definition of "Emissions-related Information"

EPA also received numerous comments regarding the list of emissions-related information found after the definition of emissions-related training information, most of which were also found in paragraph (5) of the proposed regulations pertaining to information that must be posted on OEM Web sites.

The Automotive Parts Rebuilders Association (APRA) and the Automotive Engine Rebuilders Association (AERA) commented at the public hearing that the examples used by EPA to define "emissions-related information" may be construed as narrowing the scope of information that must be provided. APRA and AERA further commented that the categories proposed by EPA should not be and are not all inclusive. In particular APRA and AERA commented that the 1995 service information regulations define "emissions-related information" as including information related to the powertrain, system, fuel system, ignition system, and transmission system, none of which are mentioned in the proposed rule. APRA and AERA commented that the new final rule should include the list above from the 1995 rule as well as the additional items included in the June proposal . APRA and AERA also commented that EPA should include language from the current rule that "emissions-related information" also includes any other information specified by the Administrator to be relevant to the diagnosis and repair of an emissions failure found in the Inspection and Maintenance program. Comments from the

Aftermarket Consortium reiterated these concerns.

1.2.4 Definition of "Vehicle Manufacturer"

EPA did not propose to include a definition of "vehicle manufacturer." However, the Service Technician Society (STS), commented that EPA should better define the term "manufacturer." STS commented that, for example, EPA needs to clarify if Volvo is still considered a manufacturer, even though they are owned by Ford.

1.3 Response to Comments

1.3.1 Definition of "Aftermarket Service Provider"

Regarding the comments of APRA and AERA, though it is a close call, given the intermediate position rebuilders hold between parts manufacturers and service providers, we believe that rebuilders are generally closer to parts manufacturers than service providers in this context. Rebuilders are a separate and distinct sub-industry that fashions rebuilt ECU's from previously used parts. A service provider will generally order a rebuilt ECU to replace a malfunctioning ECU in a vehicle, similar to how a replacement part would be used. As the Alliance notes in its comments, rebuilt ECU's are in many respects similar to new aftermarket or OEM parts and it is reasonable to treat them similarly. The fact that rebuilders are often called "remanufacturers" supports this conclusion. Finally, as the comments indicate, rebuilders often need information that is not needed by the service and repair industry to make repairs and is not made available to dealerships. This supports the belief that rebuilders are different from service and repair providers for the purposes of this rule.

Regarding MEMA's and the Aftermarket Consortium's suggested change to the definition of "aftermarket service provider," EPA does not believe it is appropriate to expand the

definition as requested. Section 202(m)(5) focuses on providing information to parties that diagnose, service and repair vehicles, not to those who provide goods and services to such parties. While EPA may require that parties other than direct service providers receive information where it is necessary to ensure that service providers receive the information they need, the comments do not provide any evidence that parts manufacturers fall within the definition of aftermarket service providers, as contemplated in section 202(m)(5). While EPA is sympathetic to these comments and believes in particular that manufacturer Web sites should be open to all interested parties, including rebuilders and parts manufacturers, EPA does not believe that a revision to the proposed definition of "aftermarket service provider" is appropriate.

Regarding the comments from NADA, while we agree that the protections of section 202(m)(5) apply equally to franchised dealerships as to aftermarket service providers, the language and history of section 202(m)(5) make it clear that Congress perceived that dealerships are often differently placed than aftermarket service providers regarding access to manufacturers' emissions-related diagnostic and service information. Indeed, the perceived advantage that dealerships have had in terms of receiving manufacturer emissions-related information is one of the key reasons section 202(m)(5) was added by Congress. While these regulations are intended to be neutral in terms of the rights of all repair and service providers to receive emission-related information, the differences between dealerships and aftermarket service providers make it necessary to differentiate between them in certain places in the regulations, which requires that separate definitions be provided for them.

1.3.2 Definition of "Equipment and Tool Company"

EPA agrees with comments submitted by ETI that a definition of equipment and tool

company should be included in the definitions section of the regulatory language. EPA is also revising paragraph (11)(vii) to use the term "equipment and tool company" which will address BMW's comment that EPA uses the terms "aftermarket scan tool company" and "equipment and tool company" interchangeably. Therefore, EPA will include a definition for equipment and tool companies which reads as follows:

> 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.

1.3.3 Definition of "Emissions-related Information"

Regarding the comments that take issue with the list of emission related information found in paragraphs (2) and (5), or portions of that list, EPA notes that the list was specifically intended to provide the information required for manufacturer Web sites, and was not intended to be an all-encompassing list of emission-related information. It appears to have been printed in paragraph (2) erroneously. Therefore, EPA is not including this list in paragraph (2) of the final rule, and will address comments regarding this list in its response to comments on paragraph (5) of the rule.

EPA also agrees with the comments of AERA, APRA, and STS. It was not EPA's intent to limit the scope of required information by eliminating the language of the 1995 regulations of required information from the June 8, 2001 proposal. Therefore, EPA will include as emissions-related information the following:

> *Emissions-related information includes, but is not limited to, 1) 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, 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; 3) any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program after such finding has been communicated to the affected manufacturers.

1.3.4 Definition of "Vehicle Manufacturer"

It is not clear from the STS comment what specific concern or need there is to include a specific definition for vehicle manufacturer. Generally speaking, for the purposes of all of EPA's regulations, a vehicle manufacturer is one who is issued a certificate of conformity to sell vehicles in the United States. In the STS example of Volvo and Ford, each would be treated as separate entities because each are issued their own certificates of conformity. In other words, if EPA determined that Volvo was in non-compliance with any aspect of this rulemaking, Ford would not necessarily be included in enforcement activities against Volvo. In addition, EPA believes that even though some larger OEMs own or partially own some smaller manufacturers, those smaller OEMs often continue to operate as separate and distinct businesses. Lastly, EPA believes that not having a specific definition of vehicle manufacturer will not impact our ability to monitor compliance or take enforcement action against any manufacturer.

SECTION 2: Required Information

2.1 Summary of Proposal

EPA proposed in its general requirements in paragraph (2) of the regulations that manufacturers 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 manufacturers would be required to make available on their OEM-specific Web sites. Following is this list.

(i) manuals, technical service bulletins (TSBs), diagrams, charts, training materials (see Section 10 for discussion) and videos.

(ii) OBD system operational information that describes functional characteristics of the OBD system and emission-related components. This information includes, but is not limited to, OBD generic drive cycle information, component operating ranges, and system logic flow diagrams. EPA also proposed that, to the extent that this information is not available to OEM dealerships, OEMs must develop and distribute this information to both their dealerships and the aftermarket.

(iii) documents such as component and subsystem manuals provided to OEMs or franchised dealerships by suppliers or other parties that have agreements with OEMs.

(iv) 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),

(v) 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).

(vi) 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. This information also includes any 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.

2.2 Summary of Comments

Numerous comments were received on the general requirements and the proposed list of required information.

2.2.1 Bi-directional Control and Data Stream Information

The Alliance of Automobile Manufacturers (the Alliance) and the Association of International Automobile Manufacturers (AIAM) commented that EPA proposes in paragraph (2)(i) that data stream information and bi-directional control information be included in the information required to be made available directly to aftermarket service providers. They further commented that including a reference to bi-direction in this paragraph implies that data stream and bi-direction control information is considered information that would need to posted on OEM Web sites. The Alliance and AIAM commented that this information is actually used by equipment and tool manufacturers to develop aftermarket diagnostic scan tools and that this information is not needed by service providers to diagnose and repair emissions-related problems. The Alliance and AIAM recommend that any reference to data stream and bi-directional control information be deleted from paragraph (2)(i). The Alliance and AIAM do not object to this information being made available to equipment and tool companies and note that

this information would be provided to these companies under paragraph (12).

The Equipment and Tool Institute (ETI) commented in response to the Alliance and AIAM comments. ETI commented that this information should remain listed as proposed because the ultimate reasons for providing this documentation is to get it indirectly to aftermarket service providers through the use of a tool. ETI further commented that EPA's use of the phrase "or cause to be furnished" in these sections is sufficient to avoid any misunderstandings about who should get the information.

2.2.2 OBD Generic Drive Cycle Information

The Alliance and AIAM commented that the term "OBD generic drive cycle information" is not defined in the proposal and are 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.

The Westchester/Putnam chapter of the Service Technician Society commented that VIN-specific drive cycle definitions need to be made available for all vehicles.

Ultimate Cars commented that specific as well as generic drive cycle information should be released to aftermarket service providers because this type of information is critical to resetting monitors and verifying repairs.

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. SEMA also commented that drive cycle information is also needed to ensure that aftermarket parts pass CARB tests for aftermarket parts approval. 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.

BMW submitted written comments supporting the position of the Alliance and AIAM on this issue. Although BMW does have a generic consolidated drive cycle available in its training materials, BMW agrees with comments that monitor-specific generic drive cycles are sufficient.

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.

2.2.3 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 commented that some manufacturers 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.

In later comments, the Alliance and AIAM extensively reiterated their concerns about EPA's proposal to make available OBD system operational information, which includes generic drive cycle information, component operating ranges, and system logic flow diagrams. The

Alliance and AIAM again commented that much of the information proposed by EPA is indeed proprietary information and is therefore protected under Section 208(c) of the Clean Air Act. Further, the Alliance and AIAM commented that it is not appropriate for EPA to require that all OEMs make available information that currently only some OEMs make available. Finally, the Alliance and AIAM commented that EPA should delete any regulatory provision that would require the disclosure of OBD system operational information including generic drive cycle information, component operating ranges, and system logic flow diagrams. The Alliance and AIAM also commented that EPA should include language in the final rule indicating that what some manufacturers choose to disclose is not relevant to the separate question of what all manufacturers are compelled to disclose.

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 manufacturers to make available general descriptions of OBD system information rather than the specific list proposed by EPA.

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 parts 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.

2.2.4 Diagnostic Trouble Trees

The Alliance and AIAM commented that the proposed rule would require OEMs to post to their Web sites emissions-related diagnostic procedures (a.k.a. fault trees), and that EPA would not allow manufacturers to require vehicle connection to access those procedures. The Alliance and AIAM commented that some OEMs make diagnostic trouble trees available only via their OEM specific scan tool. The Alliance and AIAM are opposed to any provision that would require OEMs to convert the diagnostic trouble trees to another format for posting on OEM Web sites. They further commented that it is not likely that aftermarket technicians would want to view any trouble trees without a vehicle being present and connected to a scan tool. Lastly, the Alliance and AIAM comment that conversion to alternate formats for Web site posting would be burdensome to at least some OEMs who only make this information available

via their respective OEM specific tools.

To address this issue, the Alliance and AIAM, proposed that EPA delete the proposed prohibition against requiring the scan tool be connected to a vehicle to access diagnostic trouble trees. OEMs who do utilize their OEM specific diagnostic scan tool to access diagnostic trouble trees and who do not otherwise publish this information elsewhere should be required to make this information to equipment and tool companies for incorporation into generic aftermarket scan tools.

BMW submitted written comments that supported the comments made by the Alliance and AIAM with reservations. BMW commented that providing Web-based full text documents of diagnostic trouble tree information would be cumbersome due to the complexity of the diagnostic routines developed by BMW. BMW further commented that it has developed software applications that take service providers automatically through diagnostic routines and to require that these automatic routines be made available in any other manner would be resource intensive and inconsistent with industry trends in utilizing advanced technology for diagnosis and repair. However, BMW claimed that it cannot make these automated routines available through a generic tool connected to a vehicle. BMW commented that there are, however, inexpensive ways to make automated diagnostic routines available to aftermarket service providers with a BMW-specific tool. BMW also commented that EPA should finalize a provision that allows emissions-related diagnostics to be performed with vehicle connection that could be accomplished using a pass-through tool, using a generic scan tool, or using a manufacturer-specific adapter, as long as the device used for the connection meets the fair and reasonable cost parameters required by EPA.

ETI commented that the issue about diagnostic trouble tree information is not whether a diagnostic procedure can be performed with a vehicle present. Rather, the issue is whether or not a diagnostic procedure can be performed without the factory scan tool being present. ETI commented that the plan proposed by the Alliance and AIAM will not work. ETI commented that the OEMs are responding to the specific set up of particular manufacturers that require the purchase of the OEM specific tool to perform and connect to the respective OEM Web site in order to perform certain diagnostic procedures. Under this scenario, the Web site would have limited value to a facility that did not have an OEM tool. If OEMs gave this information to equipment and tool manufacturers, OEMs would need to diagram the repair procedure and provide the logic for the diagnostic procedure so that it can be programmed into the electronic manual and the repair tool. ETI further commented that it should not be too difficult for OEMs to put this information into a usable format for posting this information directly on OEM Web sites.

2.2.5 Anti-theft Information

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 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 re-initialization 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 manufacturers already comply with the proposed requirement and that allowing sufficient lead time for a minority of manufacturers 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 Alliance and AIAM claim that independent repair shops cannot be treated like dealers because the OEM relationship with dealers is bigger than just service information, and that relationship would be in danger if the dealer abuses security information. Also, the proposed regulations give aftermarket service providers the information as of right, which does not provide OEMs any recourse if an aftermarket service provider takes actions that threaten the security of the vehicle.

The Automotive Service Association (ASA) also provided comments at the public hearing 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 the 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. AIAA and AWDA further commented that the proposal does not go far enough. AIAA and AWDA are particularly concerned about rebuilt electronic control units (ECU) that must be removed from the vehicle that are sent off-site for the rebuilding process. AIAA 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.

Vincent J. Porcaro 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.

J&J Automotive commented that the sensitive nature of anti-theft information can be addressed with bonding. J&J Automotive provided no further information on what is meant by

bonding.

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 manufacturer 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 tool. 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 Electronic Control Unit (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 American (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. Honda further commented that they do not currently have a technical solution for their vehicle system designs that would not jeopardize the security of their systems. If a technical solution does exist, Honda commented that it could not begin to implement a solution until 2005 at the earliest and would need until 2008 for full implementation.

In their comments, the Aftermarket Consortium reiterated its support for making anti-theft and re-initialization procedures available to the aftermarket, including those companies that rebuild electronic control units (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 vehicle manufacturers 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.

2.2.6 Component and subsystem manuals provided to OEMs by third party suppliers

Delphi Automotive Systems (Delphi) commented that EPA's proposal to require manuals, including subsystem and component manuals that are supplied to OEMs by Tier 1 suppliers of components and systems such as Delphi is overly broad and specific, and may result in the dissemination of proprietary information. Delphi further commented that Tier 1 suppliers are involved over the course of the vehicle development process, and much of the information related to the design and manufacture of components is communicated to the OEM in the form of a component manual. Much of the information in these manuals is proprietary information. Delphi recommended deleting any reference to subsystem and component manuals. Delphi recommended that EPA remove any reference to subsystem and component manuals in the regulations to avoid any interpretation requiring the release of proprietary Tier 1 supplier information.

The Alliance and AIAM commented that proprietary information in the form of component manuals is occasionally provided by an OEM supplier to a manufacturer to support the vehicle design and development process. Because this information is not generally supplied

to OEM dealerships, the Alliance and AIAM commented that any reference to subsystem and component manuals be deleted. In the alternate, the Alliance and AIAM commented that, should EPA wish to keep such a reference, additional language be added that this information only be made available to the extent it is made available to OEM dealerships.

ETI commented that they believe the original intention of this proposed requirement was to ensure that subsystem repair manuals be made available to the aftermarket. ETI believes that there are some cases where OEMs provide supplier repair manuals directly to dealers rather than rewriting them or incorporating them into the OEM repair manual. ETI further commented that there is nothing in the proposed language that would lead anyone to the conclusion that EPA is seeking proprietary information and recommends that this section remain unchanged.

The Motor and Equipment Manufacturers Association (MEMA) also commented that it supports the availability of subsystem and repair manuals produced by Tier 1 OEM suppliers to aftermarket service providers. MEMA further stated that it would support a provision that would have this information in full-text on the OEM Web site rather than a provision that would require Tier 1 suppliers to develop and maintain separate Web sites with this required information.

2.2.7 Information About Other Systems Which Affect Emissions

The Aftermarket Consortium commented that they are concerned about the language proposed by EPA to require manufacturers to make available “any information on other systems that can directly effect the emission system within a multiplexed system”. The Associations commented that the use of word “directly” in this section may be used to create an artificial distinction between information which is to be provided and information which is not. The Association recommended that the word “directly” be removed because there is no need to make

such a distinction because if the OBD system commands the MIL on, the information is emissions related.

J&J Automotive commented that EPA should include information on other systems that both directly and indirectly impact the emission system within a multiplexed system.

2.2.8 General Comments on Required Information

APRA and AERA commented that it appears that there was an oversight in sections (g)(5) and (f)(5) of the proposed regulatory language which omits one category of information outlined in the preamble language. In the preamble language EPA specifically proposed that OEMs make available manufacturer-specific emissions-related diagnostic trouble codes (DTCs) and any related service bulletins, trouble shooting guides and/or repair procedures associated with these manufacturers specific DTCs. The Aftermarket Consortium also made this comment. They also stated that EPA must be careful not to narrow the scope of information to be provided and include the language that is currently in the 1995 regulations.

The Westchester/Putnam chapter of the Service Technicians Society commented that recalls, internal campaigns, and voluntary recalls need to be made available at the same time OEMs make this information available to OEM dealerships. These comments were also echoed in written comments submitted by the national Service Technicians Society.

2.3 Response to Comments

2.3.1 Bi-directional Control and Data Stream Information

EPA agrees that aftermarket service providers do not need access to data stream and bi-directional control information to diagnose and repair emissions related problems. However, as noted by ETI, data stream and bi-direction control information must be made available indirectly

through scan tools. The comment from the Alliance and AIAM appears to misinterpret the purpose of paragraph (2)(i). This paragraph, which is copied verbatim from the preexisting regulations, is merely designed as a general overview of the information that manufacturers must provide to service providers, either directly or indirectly. Paragraph (5) provides more specific information regarding what information must be provided directly on the manufacturer Web site, and explicitly excludes indirect information like bi-directional control and data stream information from the provisions related to the Web site. ETI correctly notes that the term "cause to be furnished" is used in paragraph (2). Moreover, there is a reference to providing information directly or indirectly to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles. This should be sufficient to avoid confusion, and EPA is not aware that this (preexisting) paragraph has caused confusion in the past. EPA is not revising the proposed language for the final rule.

2.3.2 OBD Generic Drive Cycle Information

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 manufacturers to make available monitor-specific 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 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.

2.3.3 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 that the OEMs are well aware of. 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 manufacturers 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 manufacturers 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 manufacturers 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. As stated in the preamble, 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 II 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 lbs. 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 generic drive cycles for these monitors. 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 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, which has already been approved for Incorporation by Reference in CFR 86.099-17, paragraph (h)(ii).

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.

2.3.4 Diagnostic Trouble Trees

EPA believes that computer-based diagnostic trouble trees (i.e. electronic fault trees) are an important part of the diagnosis and repair procedures for OBD equipped vehicles. We agree with ETI comments that having to purchase an OEM-specific tool in order to have access to this information is not a reasonable option for many aftermarket service providers. However, we do understand that this form of diagnostic procedure carries with it some promising possibilities and will become more and more prevalent over time. Many OEMs have gone to considerable lengths to automate this processes and EPA has no intension of deterring these innovations in diagnostic methodology. We also understand that converting these complex automated processes into a format for Web-based access would require considerable resources for some OEMs. We also believe that the option proposed by the Alliance and AIAM to require the release of this

information to equipment and tool companies in its original format is one reasonable option that could improve aftermarket access to diagnostic trouble trees. Lastly, we also see merit in BMW's comment that this information could be provided to equipment and tool companies and fed through a SAE J2534 pass-through device. Based on these comments, EPA will finalize the following provisions for the availability of diagnostic trouble trees. First, EPA is finalizing a provision that requires each OEM who uses computer-based diagnostic trouble trees to make their OEM systems, hardware and software, available to aftermarket service providers. Second, any OEM who utilizes an automated process in their OEM-specific scan tool for diagnostic fault trees must make available to equipment and tool companies any information needed to incorporate diagnostic trouble trees into aftermarket scan tools. Lastly, any OEM who utilizes an automated process in their OEM-specific scan tool for diagnostic fault trees must also make available this same information to third party information providers. Releasing this information to third party information providers will allow information providers to put this information into a useable, full-text format which can then be purchased by aftermarket technicians. EPA believes a provision to release this information to third party information providers is necessary because EPA does not have the authority to require equipment and tool companies to include automated processes into their tools. Since EPA cannot guarantee that this functionality would be available in aftermarket scan tools, aftermarket service providers would still be in a position of having to purchase and use the OEM diagnostic solution. Therefore, we believe it is reasonable to require the release of diagnostic trouble tree information and data to third party information providers.

In response to BMW's specific comment regarding the use of a J2534 device as a method

of delivering OEM electronic trouble trees to service providers, EPA believes that this is an option that many service providers might be interested in. BMW and other OEMs should pursue this potential solution if they feel there is a market for such a product. However, this solution requires that aftermarket service providers purchase only OEM electronic diagnostic trouble trees. If this were allowed as an exclusive option, third party information providers would effectively be locked out. As stated in section 11, it is EPA's belief that the third party information providers provide a valuable service and must be able to provide alternatives to OEM information products. Therefore, OEMs who choose to offer their diagnostics over a J2534 device must still provide the necessary raw information to third party information providers that will allow them to develop electronic diagnostic trouble tree systems independent of OEMs. This way, as these new electronic diagnostic systems proliferate, service providers will continue to have a choice when it comes to purchasing repair information.

We believe these options meet the intent of the proposal to make available valuable diagnostic information to the aftermarket without placing any undue burden on the OEMs. For equipment and tool companies and third-party information providers to use this information, the data schema, detail specifications, including category types/codes, vehicle codes and data format/content structure should be provided. We believe that the information being required to meet this provision is not proprietary in nature and would not require an OEM to divulge trade secrets (i.e. it does not include proprietary algorithms or calibrations information). The information basically consists a set of instructions that guides the technician through diagnostic routines. There are several OEMs who currently present these diagnostic trouble trees in text form in their service literature. The process of automating these procedures and incorporating

them into a scan tool does not require the incorporation of proprietary information or other OEM trade secrets. In addition, any copyright and licensing issues can be addressed through the business arrangements that already exist between third party information providers and OEMs. The issue of providing information to third party information providers is discussed in more detail in section 11 of this document. We also believe that OEMs and third party information providers can work together to address any technical issues that may arise in translating this information into usable full-text information for aftermarket service providers. If necessary, EPA will provide guidance in this area as required based on the issues that develop. Lastly, any OEM can satisfy the requirements to make available automated diagnostic trouble trees by making this information available in full-text on the OEM Web site as originally proposed by EPA. As long as the information provided on the OEM Web site is complete and effectively mirrors the capabilities of the electronic diagnostic system, any OEM who chooses this option would not be required to release this information to equipment and tool companies and third party information providers. Ultimately, we believe that these solutions will satisfy EPA's interest in providing diagnostic trouble trees in a useable, cost effective format for the aftermarket, without placing any undue burden on OEMs.

With regard to EPA's proposal to prohibit connection to the vehicle to access diagnostic trouble trees, based on information received since the proposal, we agree the Alliance and AIAM, and BMW that finalizing a provision that prohibits a connection to a vehicle to access these diagnostic routines would not be of much use to an aftermarket service provider. Therefore, we will not finalize this prohibition in today's action.

2.3.5 Anti-theft information

We understand that a majority of OEMs currently make available re-initialization information regardless of its connection to an emissions-related repair. In fact, we understand that these OEMs view re-initialization information as standard service information in the vain of a reprogramming event or a repair procedure (e.g. a key-on, key-off sequence that is available in a repair manual) and that no special tools or processes are needed by either the dealerships or the aftermarket to perform this service. 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 vehicle manufacturer's Web site unless they choose to do so. However, the vehicle manufacturer's Web site shall contain information on obtaining the information and/or ability to perform re-initialization.

Beginning with the 2008 model year, it is required that all OEM systems 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 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 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 manufacturers provide the information directly to

aftermarket technicians, not through dealerships, several manufacturers 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 manufacturers 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. Manufacturers 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 manufacturer's Website; rather they allow manufacturers to provide the information enabling re-initialization to aftermarket technicians in a secure manner. The Alliance/AIAM comments note that many manufacturers already provide such information directly to the aftermarket.

2.3.6 Component and subsystem manuals provided to OEMs by third party suppliers

While we understand the concerns raised by Delphi during the comment period, we agree with comments from ETI that we were sufficiently clear in the proposal that EPA was not proposing to require the release of any proprietary information, only information needed in conjunction with the service, repair, installation, or replacement of parts or systems developed by third party (i.e. Tier 1) suppliers for OEMs. These third party suppliers contract with OEMs to develop parts and entire vehicle systems (such as engine management or audio systems) that are

installed in vehicles prior to their original sale. These parts or systems are part of the original OEM configuration of the vehicle and are generally not considered aftermarket parts. Because of increasing OEM reliance on these third party arrangements to develop integral pieces of a vehicle, we believe that it is important for any corresponding service and repair information be made available to the aftermarket service industry. Therefore, we will finalize a provision that requires the availability of any information related to the service, repair, installation or replacement of parts or systems developed by third party (Tier 1) suppliers for OEMs. To further ensure Delphi and other interested parties that we are not requiring proprietary information, we will limit the information required to be made available to that which is made available to OEM dealerships. Additionally, we will allow OEMs who have parts or systems requiring these third party instructions or repair information to make this information available for ordering from their OEM Web sites in a similar manner to that of the training material as discussed in section 12 of this document. OEMs may also choose to create a link from its Web site to the Web site(s) of the third party supplier. We believe this is a sufficient way to distribute this type of information at this time given the relatively small amount of information that fits under this category. EPA will continue to monitor the amount of service information that fits under this category to ensure that the aftermarket has reasonable access to this information. EPA will revisit the issue in the future if there appears to be significant increases in the amount of service and repair information generated by Tier 1 suppliers to determine if full-text availability will be necessary.

2.3.7 Information About Other Systems Which Affect Emissions

EPA agrees with comments submitted by the aftermarket industry associations that the word “directly” be removed because there is no need to make such a distinction. Therefore, EPA

will finalize a provision that requires OEMs to make available any information on other systems components, computer modules and related communications, or parts that are likely to impact emissions and/or may impact the operation of emission-related systems, components, computer modules and related communications, and parts within a multiplexed system (e.g., how information is sent between emission-related system modules and other modules on a multiplexed bus).

2.3.8 General Comments on Required Information

EPA agrees with APRA and AERA that we inadvertently excluded DTCs and associated information from the requirements of paragraph (5), though they were included in the list of emissions-related items in paragraph (2). Paragraph (5) of the final rule includes the requirement to provide DTCs and related information.

SECTION 3: Pre-1996 Model Years

3.1 Summary of Proposal

EPA proposed that OEMs either continue to maintain their databases of required information on FedWorld or transfer this information from FedWorld onto their OEM Web sites and continue to make information available for sale as it currently is in FedWorld for 1994 and 1995 vehicles. OEMs may also choose to upload this information in full-text for these model years to the extent that it is feasible for them to do so.

3.2 Summary of Comments

The Alliance of Automotive Service Providers commented that EPA should encourage OEMs to provide information for pre-1996 model years to third party information providers to ensure that all information is made available to aftermarket service providers. STS suggests

alternative methods for 1994-1995 model year information could include scanned text pages with a searchable index. The New Hampshire DES suggests that OEMs provide full text information for 1994 and 1995 vehicles, though it believes that additional lead time would be appropriate.

3.3 Response to Comments

EPA proposed this provision in response to OEM feedback prior to the release of the proposal that the formats for at least some of the OEM emissions-related information for the 1994 and 1995 model year would be costly to convert to formats that would be postable in full-text to OEM Web sites. Given that OBD systems were not installed on the entire fleet for these model years, EPA believed it was reasonable to propose an index and ordering system similar to FedWorld for 1994 and 1995 model year vehicles. While EPA agrees with AASP, STS and New Hampshire DES that every effort short be made by the OEMs to make information available for the 1994 and 1995 model years, the OEMs have made a compelling case that even scanning information as suggested by STS would take considerable resources for some OEMs. We are concerned that moving forward with a full-text requirement for 1994 and 1995 model years could divert resources that would otherwise be used for meeting the Web requirements to up-loading information that is in relatively less demand from an emissions-related information perspective. In addition, CARB is requiring that OEMs must make full-text information available for 1994 and 1995 model years that have been certified by CARB as CARB OBDII compliant. EPA's requirements, this CARB requirement, and the ability of the aftermarket to order information for these model years should make available sufficient information to service these vehicles. Therefore, EPA will finalize a provision that these model years may be indexed and made available for ordering rather than being posted in full-text. We will also finalize a provision that

requires OEMs to utilize their individual Web sites rather than using FedWorld to post their indexes.

While we did not propose specifics as to how the indexed information should be made available, we are finalizing provisions similar to the ones required under the 1995 service information rule. Therefore, each OEM shall index their available information 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. 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.

SECTION 4: Other Media

4.1 Summary of Proposal

EPA proposed that OEMs would not be required to simultaneously maintain multiple media formats such as CDs and paper once the move to the World Wide Web is complete. However, EPA also requested comment on the format by which OEM specific service information would be made available after the proposed 15 year window for maintaining full-text

information on their sites. EPA also proposed that, subsequent to this fifteen year window, OEMs could archive the information in the OEMs format of choice and provide an index of the archived information on the OEM Web site and how it could be obtained by interested parties. We also proposed that archived information must be made available on demand and at a fair and reasonable price.

4.2 Summary of Comments

SEMA commented that they believe there is a need for offline access to service information. They commented that EPA should ensure information is not limited to distribution only via a scan tool or OEM Web sites. Making the required information available either directly or indirectly via hard copy, electronic media (e.g CD-ROMs), or via third parties will help ensure access for aftermarket service providers.

4.3 Response to Comments

EPA agrees to some extent with the SEMA comments on this issue. In particular, we agree that OEMs cannot make information available only via their scan tools and we have finalized the necessary provisions in today's action to make sure that this is the case. However, as discussed in the preamble to the proposal, we are reluctant to finalize a provision that would require the OEMs to maintain multiple media to meet the distribution requirements of service information because of the potential maintenance expense. SEMA provides no justification for its comment, which is conclusory in nature. Therefore, we are not generally requiring that OEMs make materials available in other media. However, we are finalizing the provision we proposed that requires OEMs to make available for ordering the required information in some common, readily available format that is accessible to the aftermarket 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. OEMs may allow for the ordering of information directly from their Web site, or from a Web site hyperlinked to the OEM Web site. In the alternate, 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 do so within one regular business day of received the order. Items 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 and at a fair and reasonable price.

In addition, we also believe that the provisions we are finalizing for information for third party information providers will address SEMA's concern that aftermarket service providers have a choice in how they access service information. We believe that third party information providers will continue to make available their consolidated information via CD-ROM and in some cases via hard copy. However, we believe that the format of service information will be determined by market demand.

SECTION 5: Timeliness and Maintenance of Information

5.1 Summary of Proposal

We proposed that OEMs upload the required information on their Web sites within three

months of model introduction. After this three month period, we proposed that the required information for each model be available and updated on the OEM Web site at the same it is available by any means to their dealers. We also proposed that, beginning with the 1996 model year, OEMs maintain the required information in full text for at least 15 years after model introduction. EPA also proposed that OEMs launch their full-text Web sites within 6 months of publication of the final rule for 1996 and later model year service information.

5.2 Summary of Comments

The Automotive Service Association (ASA) commented at the public hearing that they would prefer to see OEM information available on their Web sites for at least 20 years to address the increasing number of older vehicles on the road today, most of which are serviced by the aftermarket. The ASA also submitted written comments reiterating the need for a 20 year period for full-text access to OEM information. ASA also expressed support for EPA's proposal for OEMs to post information within 3 months of model introduction and to update that information at the same time as dealers, stating that these items are "essential" for aftermarket service providers.

The National Automobile Dealers Association (NADA) commented at the July 25, 2001 public hearing that EPA require an effective date of MY2003 and a requirement that information for older model years (1994-2002) be posted within 2 years after the final rule is published.

The Automotive Parts Rebuilders Association (APRA) and the Automotive Engine Rebuilders Association (AERA) commented at the public hearing that they too would recommend that EPA require OEM information to remain available in full-text on OEM Web sites for a period of 20 years. APRA and AERA site statistics that suggest the average age of

domestic cars on the road today as of January 1, 2001 was 10.2 years.

The Alliance of Automotive Service Providers (AASP) commented that 15 years may not be a long enough period of time for most aftermarket repair shops and would support a provision that would extend the length of time that information is maintained on OEM Web sites, although they do not specifically comment on what that length of time should be. AASP supported the requirement that OEMs provide information to their Web site within 90 days of release to the OEM dealership network.

The Alliance and AIAM commented at the public hearing that OEMs should be given one year of leadtime to implement the regulation. They also commented that, rather than three months from model introduction, OEMs should have 180 days from the date they provide information to dealerships to provide that information to the OEM Web site. The Alliance and AIAM also submitted written comments in response to the comments provided at the public hearing that OEMs should maintain full-text information on their Web sites for a period of 20 years, rather than the 15 years proposed by EPA. The Alliance and AIAM commented that they would not be opposed to such a provision. However, the Alliance and AIAM point out that maintaining the data on the servers for a longer period of time will increase the cost of data storage for the OEMs. Consequently, any determination of "fair and reasonable price" must be increased appropriately.

The Aftermarket Consortium commented that the fifteen-year period during which emissions-related information must be kept on the Web sites is too short. The Aftermarket Consortium also favored a 3 month time frame for uploading information to OEM Web sites. The Aftermarket Consortium also cited the statistics that were presented at the public hearing by

APRA and AERA to support their statement. The Aftermarket Consortium also commented on the time requirements proposed by EPA for uploading information to OEM Web sites. In sections (g)(3)(ii) and (f)(3)(ii), EPA proposes that OEMs make available information at the same time that information is made available to their dealerships, but also states that it can be made available up to 14 days later.

Mr. Vincent J. Porcaro commented that it was not necessary for the OEMs to upload their information within 3 months of model introduction as proposed by EPA. Mr. Porcaro commented that a 6 or 9 month window is appropriate given that relatively few vehicles are seen in the aftermarket early and therefore additional leadtime will have little or no affect on the aftermarket. Mr. Porcaro further commented that this additional leadtime would allow the OEMs to spread out the cost of loading the data, which would reduce the cost for the aftermarket.

Nissan of North America Commented that EPA's proposal to require launch of full-text Web sites 6 months after the final rule is issued does not provide OEMs with enough lead time given that the process of moving information to the Internet cannot begin until the final requirement are clearly understood. In Nissan's case not all of their documents for the 1996 - 2000 model years currently exist in similar formats. In addition, Nissan must identify all materials to be provided, determine the format the materials must be converted to for Web posting, and then post the materials on the Web. Given these factors, Nissan proposes that EPA allow all OEMs one year from issuance of the final rule to launch their Web sites.

BMW commented that they generally support the comments submitted by the Alliance and AIAM to allow one year from the final rule to implement the full-text Web requirements. BMW further commented that a phase-in is also necessary due to the fact that not all effective

model years of vehicles will begin to be serviced by the aftermarket at the same time. To this end, BMW proposed that information for model years 1996 -1998 and model years 2002 and beyond be required on Web sites 12 months after the final rule is issued. BMW proposed that information for model years 1999 - 2001 would be required on Web sites 24 months after the final rule is issued.

The New Hampshire Department of Environmental Service commented that they support EPA's proposal to require full-text information for 1996 and newer model year vehicles within 6 months of the final rule, and within 3 months after model introduction.

American Honda commented that they cannot comply with EPA's proposal to post information to OEM Web sites within 3 months of model introduction, not currently or in the future. The process which American Honda utilizes to develop their service information is not currently automated and they need significant lead-time to transition to a new system. American Honda further commented that the publishing system is book based which requires that a manual (book) be completed before the data can be extracted. For American Honda, their paper manuals are completed 1 - 3 weeks prior to the sales release and therefore, the electronic information is not extracted until about the same time a vehicle line is released for sale. All of this process takes place in Japan. Once the information is received from Japan, American Honda goes through an extensive process to verify information and must work with Japan to address errors and because the process is not automated, it takes nearly 6 months to complete. While American Honda is in the process of updating their process, they anticipate that it will take at least three years to complete. Therefore, American Honda proposes that OEMs be given 180 days from vehicle sales release to upload information to their Web sites, although American Honda also

suggests that the information should be available at the same time it is released to the franchised dealers. Honda also states that it needs more time than the 180 days proposed to meet the initial deadline for uploading information from the 1996 - 2002 model years on its Web site. It suggested a 50%/100% phase-in in 2003 and 2004 .

The Service Technicians Society (STS) submitted written comments in support of the proposed 15 year window for access to full-text OEM service information. The Westchester/Putnam chapter of STS suggested increasing the years from 15 to 20.

ETI commented that the lead time proposed by EPA to launch OEM Web sites should be finalized as proposed.

5.3 Response to Comments

EPA believes that a 15 year window of availability of full-text information should be sufficient to service the majority of vehicles. We believe that our requirement for OEMs to maintain information in an index and ordering format after the 15 year window expires will ensure that information is still generally available without adding additional burden on OEM Web site infrastructure. We agree with the Alliance and AIAM comments that maintaining the additional infrastructure needed to house an additional five years of information in full-text could potentially increase the overall cost of access to OEM information to the aftermarket. Therefore, we will finalize a provision that requires OEMs to maintain information in full-text for 15 model years. After the 15th year, OEMs will be required to maintain an index of the information in accordance with the provisions discussed in section 4 of this document.

With regards to our proposal that OEMs make their information available within three months of model introduction, we understand that some OEMs may face internal administrative

hurdles to uploading their information within 90 days. Several OEMs commented that a 6 month period after model introduction would be more feasible and one aftermarket service provider commented that as much as a 9 month period would be sufficient. While there is no clear consensus on the most reasonable time period, we believe that a 6 month time period after model introduction will be sufficient to ensure timely access for the aftermarket to OEM information. Therefore, we will finalize a provision that will require OEMs to upload the required information to their respective sites 6 months after model introduction. Subsequently, updates to the sites are required to be made available to the aftermarket at the same time updated information is made available to the OEM dealerships. EPA also agrees with the comments submitted by the Aftermarket Consortium that our proposal to allow the OEMs up to 14 days to upload information on their Web sites conflicts with our proposed requirement that information be uploaded at the same time it is uploaded to OEM dealerships. Therefore, we will remove any reference to a 14 day time period and require that subsequent updates to the sites are required to be made available to the aftermarket at the same time updated information is made available to the OEM dealerships.

With regards to EPA's proposal that OEMs launch their Web sites no later than 6 months after the final rule is issued, we understand some of the OEM's concerns that they have not had a final rule in place that would allow them to move ahead with certainty to design and implement their full-text Web sites. However, EPA has been discussing the move toward full-text Web sites since 1998 and CARB's plans for requiring full-text Web sites has been well known since at least 2000. Therefore, while all of the details had not been fully worked out, we believe that OEMs have had sufficient time to plan and implement a move to full-text delivery of their service

information. In fact, EPA is aware of at least 10 OEMs who are well underway in the development and launch of their Web sites. To this end, we believe that 6 months lead time is an adequate length of time to incorporate the few administrative details for Web site availability that are required by this final rule. Therefore, EPA is finalizing a provision that will require OEMs to launch their full-text Web sites within six months of the effective date of this final rule (small volume OEM requirements for Web site launch are discussed in section 6 of this document). However, EPA will allow some relief for OEMs with exceptional circumstances. Any OEM who is not able to launch their Web site within six months must submit to the Administrator a letter detailing the reasons that their Web sites cannot be launched and include an implementation plan for when the site will be launched. In any case, the Administrator will not grant any more than an additional six months for any OEM to fully launch their Web site as required by this final rule (i.e. 10 months after the effective date of this final rule).

With regards to the model years that will be required to be made available at launch, we do not agree with the comments submitted by NADA that OEMs should be allowed 2 years to launch full-text information for model years 1994-2002. In fact, these are the very model years that the aftermarket is currently servicing, or will be servicing in the very near future, and any delay in improving access to this information will have an adverse affect of the ability of the aftermarket to service large numbers of vehicles. Again, we do understand that some OEMs may face some administrative hurdles in converting existing information for Web based delivery. However, we believe there are only a few manufacturers in this position and that there is no need to build in any significant lead time across the board for all OEMs.

Therefore, EPA will finalize a provision that requires all 1996 and later model year

information to be made available upon launch of the OEMs Web sites. OEMs who need additional leadtime for some model years must submit to the Administrator a letter detailing which model years cannot be launched when required and include an implementation plan for when the information will be available on their Web site in full-text. In any case, the Administrator will not grant any more than an additional 6 months for any OEM to fully launch their Web site as required by this final rule (i.e. 12 months after the effective date of this final rule).

SECTION 6 : Small Volume Provisions

6.1 Summary of Proposal

We proposed that OEMs with annual sales of less than five thousand vehicles be given an additional 12 months to launch their Web sites. OEMs with annual sales of less than one thousand vehicles would be 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

6.2 Summary of Comments

The Alliance and AIAM submitted comments in support of flexibility for small volume OEMs. The Alliance and AIAM further commented that this provision should apply to any OEM independent of whether the OEM is owned in part or in whole by another manufacturer and that EPA should clarify this in the final rule. Vincent J. Porcaro commented that all OBDII equipped vehicles sold must supply the needed information and that only specialty low production vehicles should be exempt. Mr. Porcaro further commented that if a manufacturer has worldwide presence then it has the ability to supply the needed information.

6.3 Response to Comments

We agree with the comments submitted by the Alliance and AIAM. It was our intent that Web sites would be required for OEMs for which certificates are issued. In other words, although Ford Motor Company owns part of Jaguar, Jaguar goes through EPA's certification process independently of Ford. In this case, Jaguar would be independently responsible for compliance with the final service information regulations.

In response to the comments submitted by Mr. Porcaro, though some small manufacturers have worldwide presence, the limited scope of their U.S.- bound production make the proposed small volume manufacturer flexibilities appropriate.

Therefore, EPA is finalizing a provision that OEMs who are issued certificates with annual sales of less than one thousand vehicles would be 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.

SECTION 7: Accessibility and Performance Requirements

7.1 Summary of Proposal

7.1.1 Accessibility Requirements

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, manufacturers 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 manufacturer'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.

7.1.2 Performance and Reporting Requirements

We proposed that manufacturers 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 manufacturers' Web sites (i.e., one year and four months after the final rule takes effect), or upon request by the Administrator.

7.1.3 Downloading of Information

We proposed that OEMs develop Web sites that allowed interested parties to purchase, download, and/or print information.

7.2 Summary of Comments

7.2.1 Accessibility Requirements

The Alliance and AIAM 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. The Alliance and AIAM 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 manufacturers). The Alliance and AIAM recommend deleting this requirement from the final rule.

The Alliance and AIAM also commented that EPA should not finalize a provision that would require OEM Web sites to be searchable by part number, as suggested by APRA and AERA in their public hearing testimony. Such a requirement would add significant and unnecessary complexity and would drastically increase cost to OEM Web sites and would not improve access for aftermarket service providers. It would not generally be practical or useful to technicians to be able to search by part number. OEM service and diagnostic procedures are not structured in a way to allow search by part number.

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. APRA and AERA did comment that they would like to see OEM Webs sites searchable for part number. APRA and AERA cited instances where a service provider has a defective part and would be better able to access the precise information needed rather than having to look through large volume of

information retrieved by a model and/or model year search.

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 OBDII 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.

American Honda and BMW submitted comments supporting the position of the Alliance and AIAM that VIN searches on OEM Web sites are difficult to deliver accurately and not needed by service providers.

The Aftermarket Consortium submitted comments suggesting that a search by VIN on OEM Web sites is not necessary. However, they do support a search by part number given that service providers will oftentimes need to replace a defective part. Under this scenario, service providers know the part number and the ability to search the OEM Web site by this part number will allow the service provider to find the precise information he needs without having to access

larger volumes of information. A search by part number will allow service providers to ensure that they have the most exact and correct information they need to do a job.

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. BMW has already created this document and included it with their comments which can be found in EPA Air Docket A-2000-49, item IV-D-22. BMW will add this document to the home page of its Web site. BMW believes that this is a reasonable solution and that EPA should either drop any reference to searches by Model year or at a minimum add language that would allow for other appropriate vehicle delineations such as body series.

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.

7.2.2 Performance and Reporting Requirements

The Alliance and AIAM commented at the July 25, 2001 public hearing 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.

American Honda commented that some level of reporting needs to be implemented. However, Honda stated that it is difficult to understand the purpose of most of the listed reports proposed by EPA.

BMW commented in their written submission that they agree with the comments submitted by the Alliance and AIAM that the 17 criteria proposed by EPA to gauge Web site

performance is too specific and that the issue should be dealt with through manufacturer guidance issued by EPA. BMW would be willing to participate in such a workshop.

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

7.2.3 Downloading of Information

The Alliance and AIAM commented that EPA should not finalize a provision that would require OEMs to allow for the downloading of the required information as stated in the preamble. Finalizing such a provision would prevent OEMs from implementing protection against unauthorized downloading and piracy of their copyrighted information. BMW and Honda submitted comments supporting the position of the Alliance and AIAM.

7.3 Response to Comments

7.3.1 Accessibility Requirements

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 comments on requiring part numbers as one of the search criteria, EPA did

not propose such a requirement, nor do we see the need to finalize such a requirement. EPA agrees with OEM comments that requiring a search by part number could add significant cost to the information with little added benefit to the aftermarket.

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.

7.3.2 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.
EPA will work with OEMs and issue further guidance regarding requirements to outline a consistent format and timing of submission.

(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 posses 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.

In response to comments submitted by ASA that any OEM reporting requirements should include an assessment of information transmitted to third party information providers, EPA agrees that this is an important area to assess given the reliance of aftermarket service providers on third party information provided by such companies as Mitchell and Alldata. However, EPA believes that it is not necessary to require formal reporting on this information from OEMs at this time, given the sensitive nature of this information.

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.

7.3.3 Downloading of Information

The intent of full-text access to information on Web sites is to provide the aftermarket with timely access to OEM information. The ability to download information from OEM Web sites does not necessarily improve the aftermarket's ability to access this information. EPA believes that ability of the aftermarket to view and print OEM information directly from OEM Web sites sufficiently meets the needs of the aftermarket for real-time access to information and avoids any potential misuse of copyrighted material. Therefore, in response to comments received from the Alliance and AIAM, BMW, and Honda about potential copyright violations, EPA will not require OEMs to make their information available for downloading on to an end-user's computer system.

SECTION 8: Structure and Cost of OEM Web Sites

8.1 Summary of Proposal

We proposed a tiered approach for access to OEM Web site. 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 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 manufacturers provide mid term access for a set price. Under this scenario, aftermarket service providers would be able to access to 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 manufacturers 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.

8.2. Summary of Comments

The Alliance and AIAM commented at the July 25, 2001 public hearing 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 possibly 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 of their concern as to what the tiered access proposed by EPA would actually give them access to. 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 regards to price caps. AAIA and AWDA further recommended 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 discussions 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 the aftermarket. Mr. Haven sites 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.

BMW commented that it supports the comments submitted by the Alliance of Automobile Manufacturers (AAM) that it would be arbitrary and capricious to set price caps and that EPA does not have the authority to set any price caps.

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.

American Honda Motor Corp (Honda) submitted written comments that costs should be market driven and that EPA should take into consideration factors such as E-commerce infrastructure, security and maintenance costs, and Web master support. Further, Honda

commented that the caps proposed by EPA do not include providing all service information and that it is not practical for the information to be segmented and to account for the additional value of the information.

Honda also commented on the tiered access approach proposed by EPA. Honda commented that a 24-hour subscription period would lead to dissatisfied technicians given the effort required to register, subscribe, obtain a pass-word, log-in and then try to use the systems. If a repair takes two or three days to complete, this subscription duration would not be effective. In the alternate, Honda recommended a monthly subscription that would renew automatically unless canceled by the user. Under its proposal, Honda commented that a yearly subscription would not be necessary.

ETI commented that the Alliance and AIAM submitted nearly 4 pages of unsupportive comments 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.

8.3 Response to Comments

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 which have fewer resources; 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 manufacturers 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, AAIA, AWDA, AERA, and APRA and others suggesting that EPA include the factors we established for the 1995 rule 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 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 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 average aftermarket service provider 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 which 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 manufacturer franchised dealerships for similar information obtained from manufacturers, 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 manufacturers' incentives to provide timely, detailed user-friendly service information, Congress

did not mandate that EPA create an incentive program to motivate manufacturers, but instead Congress mandated that EPA promulgate regulations that bind their actions. Manufacturers are required to provide the information in this regulation in a timely user-friendly manner. Though EPA understands that manufacturers will be more motivated to do this if they receive more money, the requirements in these regulations are not dependent on manufacturers' 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 manufacturers 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.

SECTION 9: Hyperlinking

9.1 Summary of Proposal

We proposed that OEMs 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.

9.2 Summary of Comments

No comments were received on this issue as proposed in the NPRM. However, NADA did comment that EPA should display an emissions-related service information matrix similar to that of the NASTF service information matrix posted on the iATN Web site which contains links to the OEM Web sites and lists other manufacturer specific information.

9.3 Response to Comments

On the issue of direct hyperlinking, we are finalizing 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. In response to NADA's comment, we believe that EPA's Web site is not the first place that an aftermarket technician would be inclined to visit when looking for service information. In addition, we believe that there are numerous associations and organizations who are better qualified to maintain and update links to OEM Web sites that aftermarket technicians would be more likely to utilize in their search for information.

Therefore, EPA will not commit to utilizing its own Web site as a resource for OEM Web site links at this time.

SECTION 10: Access to OEM Web Sites

10.1 Summary of Proposal

We proposed that the Administrator shall have access to each OEM Web site at no charge to the Agency.

10.2 Summary of Comments

One state commented that I/M lanes should have free access in addition to the Administrator.

10.3 Response to Comments

We do not believe that it is necessary to finalize a requirement that would provide free access of OEM Web sites to I/M programs. While we agree that there may be information of some use to I/M programs, several resources already exist that will allow I/M programs to access information most relevant to implementing OBD checks in I/M programs. For example, Weber State University is working with OEMs to host a Web site called the "National OBD Clearinghouse" (www.autocenter.weber.edu). This site is dedicated to facilitating communications, resolving issues and conveying accurate and timely OBD information between I/M programs and the automotive industry. A similar site is hosted by Colorado State University (www.obdiicsu.com). This site is also designed to provide a central location for I/M programs to obtain information on OBD. Additionally, EPA is concerned about establishing a provision that could inappropriately give an advantage to decentralized I/M programs, which are generally independent repair facilities who perform the OBD check as well as the repair.

SECTION 11: Service Information for Third Party Information Providers

11.1 Summary of Proposal

We proposed that OEMs provide directly to third party information intermediaries all emission-related information in electronic format in English that utilizes nonproprietary software. In the alternate, we proposed that OEMs could provide access to third party information intermediaries to a Web site other than the Web site provided for aftermarket service providers to meet this proposed provision if they choose. OEMs are not responsible for the accuracy of the information distributed by third parties. However, we also proposed that where OEMs charge information intermediaries for information, whether through licensing agreements or other arrangements, OEMs be responsible for inaccuracies contained in the information they provide to third party consolidators. We proposed that manufacturers begin providing their information electronically directly to third party service providers with whom they license this material beginning with the 2002 model year.

11.2 Summary of Comments

The Alliance and AIAM commented at the public hearing that they oppose any requirement that would force them to provide information to third parties in electronic format. The Alliance and AIAM contend this proposed requirement would only serve to improve the profits of third parties, which the Alliance and AIAM also contend are multi-billion dollar businesses in some cases. Further, the Alliance and AIAM commented that the Clean Air Act does not give EPA the authority to dictate OEM business practices. The Alliance and AIAM also commented that this provision would add unnecessary complexity to the final rule and would drive up the cost of information to the aftermarket.

ASA commented at the public hearing that they support improved mechanisms for getting information to third party information providers given that they are such an integral part of the repair community. ASA further commented that EPA should be even stronger when finalizing these provisions.

AAIA and AWDA commented at the public hearing that they support a provision that would require OEMs to provide information to third party information providers in electronic formats. However, they further commented that EPA should not allow the option for OEMs to use a Web site to meet this requirement because it is not an efficient means by which to transmit the information.

The Equipment and Tool Institute (ETI), which also serves as an industry group for third party information providers, commented in response to Alliance and AIAM comments on this issue. ETI commented that OEMs and third party information providers have long standing relationship and until 1997, handshake agreements and no exchange of money was the rule rather than the exception. ETI further commented that their information provider member companies agreed with OEM efforts to forgo EPA's and CARB's proposal to adopt a standardized electronic format for service information (in the form of the Society of Automotive Engineers standard SAE J2008) with an agreement that OEM information be submitted in an easily recovered electronic format that didn't require any special hardware. ETI is concerned that the OEMs, by requesting that this provision not be finalized, are showing complete disregard for past understandings and are not concentrating on how to provide the maximum amount of information into the hands of the aftermarket. ETI further commented that third party information providers provide services beyond the consolidation of content. Many third party

information providers reformat and in some cases re-purpose disparate information to form one common “look and feel” which is of considerable benefit for the aftermarket. Additionally, third party information providers also guide aftermarket technicians through other technology issues.

The Wisconsin Department of Transportation, in its comments, encouraged EPA to maintain flexibility by allowing the use of third parties for providing repair information.

The Aftermarket Consortium commented that it supported EPA’s requirement that manufacturers make available their information to third parties. They state that third parties will continue to be a major source of information for the independent aftermarket because they provide cost-effective access in a user-friendly format. Further, without these companies, there would be no competition for the car companies, thus creating a monopoly that could send the cost of this information even higher than currently proposed. Further, the Aftermarket Consortium states that it opposes the option of allowing a separate Web site to meet the requirements because it would greatly increase costs to third party providers who must download large amounts of information and translate it to their systems. They also state that the information should be made available to third parties for the 1996-2001 model years because the information has in some cases not been supplied. Since the aftermarket is now seeing more of these vehicles, it is imperative that independents have access through their normal sources to obtain this information.

11.3 Response to Comments

We believe that a majority of aftermarket shops to a great extent depend on the consolidated information developed and distributed by third party information providers such as Mitchell and All-Data to fix cars. While we realize that OBD diagnosis and repair may require

increased access to OEM-specific information, there is no doubt that the aftermarket will continue to rely on the availability of information from third party information providers. The intent of this provision is to ensure that third party information providers get accurate information in a timely manner from those OEMs to which they pay for information.

We disagree with AIAM and Alliance comments that a provision requiring the electronic distribution of information to third party serves only to pad profits of third party information providers. The Alliance and AIAM provide no evidence or discussion that supports their claim that this provision would increase the profits of the third party information providers. Based on the numbers provided in the ETI comments, we agree that there is no comparison between the income and profits of OEMs and third party information providers.

We also disagree with the Alliance and AIAM comment that this provision would add unnecessary complexity to the final rule and would drive up the cost of information to the aftermarket. Information that will be posted on OEM Web sites will need to be prepared in some electronic format for posting and we believe that this provision will not place any undue burden on OEMs nor is it dictating business practices to require OEMs to pass this information along in an electronic format to their business partners. This provision will ensure that these third party information providers, who have been a critical element in the provision of service information to direct service providers, will have this information in proper and usable form. This is fully within the letter and purposes of section 202(m)(5), which is designed to ensure that service providers are provided promptly with the information they need to diagnose, service and repair vehicles. This requirement will increase the accuracy and timely access of the information that is ultimately used to service their vehicles. In addition, we believe that requiring a separate channel

for OEMs to transmit information to third party information providers will assist the OEMs in avoiding performance issues on their Web sites during periods when third party information providers would be using the Web sites at the same time as aftermarket service providers. We also agree with comments submitted by the Aftermarket Consortium that third party information providers encourage competition and reduces the chance that OEMs can abuse a monopoly on this information.

Additionally, we are not finalizing any provision that would require OEMs to enter into licensing and royalty agreements with every third party information provider. We are, however, finalizing a requirement that would require OEMs who otherwise have licensing or other formal business arrangements with third party information providers to make the information available electronically so that it is reasonably accessible by that third party (i.e. no unique software or hardware requirements).

Regarding the additional comments by the Aftermarket Consortium on this issue, we did not explicitly propose that OEMs develop a separate Web site for the transmission of information to third party providers. While we did allow for the option for OEMs to develop a separate Web site for the purposes of transmitting the required information, we do not believe that any OEM intends to do so to meet this requirement, particularly because of the costs involved with developing a separate site. We fully expect that OEMs will elect to transmit this information to their business partners in an electronic format or a format such as CD-ROMs, which is much more cost effective and efficient than developing a new Web site. Therefore, we have no reason to believe that this provision will impact the cost of the information for third party information providers. However, any OEM who chooses to elect the option of developing a separate Web site

must ensure that the cost of the information for third party providers remains reasonable. EPA expects that costs will not be significantly impacted. Regarding the comments that this provision should be retroactive for the 1996-2001 model year, we have not received any information that suggests that information has not been provided to third party information providers. In addition, OEMs have already commented that information for these model years currently exists in a variety of formats that may not be easily transferrable to an easily usable format. Lastly, we believe that information for the 1996-2001 model year has already been incorporated by third party information providers and redistributed to the aftermarket. Therefore, making this provision retroactive would provide very little benefit to either the third party information providers or aftermarket service providers.

Therefore, EPA is finalizing 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 model year. Therefore, this provision applies to information for models 2003 and later. Any OEM licensing or business arrangements with third party information providers are subject to a fair and reasonable cost requirements as discussed in section 8 of this document. 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.

SECTION 12: Training Information

12.1 Summary of Proposal

12.1.1 OEM Training Material for Purchase on OEM Web Sites

We proposed that OEMs 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. Additionally, we proposed 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. EPA proposed that all of the items included in this provision be shipped within 24 hours of the order being placed and are to be made available at a reasonable price. We also proposed that OEMs must tape the emissions-related class room training provided to dealerships and make those tapes available for sale on OEM Web sites.

We also proposed that these requirements apply for 1994 and later model year vehicles starting 6 months following the effective date of the Final Rule. For subsequent model years, EPA proposed that the required information 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.

12.1.2 Third Party Access to OEM Training Material

We proposed that OEMs make available to entities who develop or deliver training all emissions-related training courses transmitted via satellite or Internet training courses offered to franchised dealerships. This type of training information can then be repackaged and made available for transmission to the aftermarket by third party training providers at a later date or as market forces demand. We stated that OEMs may not charge unreasonable up-front fees to third party training providers for this access, but they may require a royalty, percentage or other

arrangement based on a per-use or enrollment/subscription basis.

12.2. Summary of Comments

12.2.1 Purchase of Training Materials from OEM Web Sites

The Alliance and AIAM commented that they are willing to make available for ordering on their Web sites emissions-related training materials, CD ROM training courses, and video-taped broadcasts of instructional sessions which are made available via satellite or other media. However, they further commented that video-taping any emissions-related classroom training courses provided to dealerships would not be practical for manufacturers or useful for service technicians for several reasons. First, the Alliance and AIAM cite the significant cost of hiring a production company to produce the tapes. Second, the Alliance and AIAM commented that it is unlikely that anyone would purchase these tapes, suggesting that shop owners would not pay a technician to view videos during work hours, nor would technicians be likely to view videos in their off-hours. Third, the Alliance and AIAM questioned the benefit for an aftermarket technician to watch a skills-based class unless they first purchase the knowledge based CD-ROM training. The Alliance and AIAM believe that a better alternative is to use the existing community college infrastructure to train repair technicians rather than provide thousands of hours of videos which will not be watched. OEMs are currently working through the training subcommittee of the National Automotive Service Task Force (NASTF) to develop a pilot program using select community colleges to train independent repair technicians. In addition, the Alliance and AIAM recommend an exception to the 24-hour shipping requirement in those instances where orders exceed supply.

The Equipment and Tool Institute (ETI) agrees with the Alliance and AIAM on this issue.

ETI comments that video taping should only be required when there is no other professional production format available for any given training,

BMW also commented that video taping would not be beneficial as they base their training on the idea that technicians learn largely in the context of hands-on demonstrations with actual parts, vehicles and tools with classroom instruction subsidized. Based on their experience, BMW estimates a cost of $200K for a single video/class.

Honda commented that taping training classes is not appropriate for their cognitive/skills training they make available to their dealerships. Honda commented that they do support making other training materials available for purchase on their Web site.

NADA commented that EPA does not have the authority to implement these requirements for training because the statute does not mention training. Further, they believe that EPA's videotaping requirement would undermine the thousands of dollars that dealerships invest every year in off-site training, and web-based product specific training. NADA also commented that when determining "fair & reasonable price" EPA should consider the price dealerships pay for the same or similar information obtained elsewhere.

AASP stated that the rule should more definitively ensure that web site or third party training packages will be available beyond just OEM classes being opened up to independents.

ASA commented that access to OEM training materials in a timely manner will result in more efficient repairs for the consumer and assist the industry in general with the transition to OBD II inspection and maintenance (I/M) programs. To this end, ASA commented that they do support OEM training materials such as videos, CD-ROM's, publications, etc., be made available for purchase by the aftermarket on OEM Web sites. Without this training information EPA might

face many of the same problems experienced with the I/M programs in the 90's. However, ASA commented that it does not believe that taping OEM training sessions will be beneficial to the aftermarket.

STS commented that they support a provision that would require OEMs to make available training information for purchase on their respective Web sites. STS also commented that OEMs should not be allowed to restrict access to diagnostic and repair information by using selective training or training practices.

12.2.2 Third Party Access to OEM Training Material

The Alliance and AIAM commented that EPA does not have the authority to require OEMs to provide emissions-related training materials to third parties and strongly oppose this requirement. They also commented that this requirement limits the manufacturers' ability to protect its copyrighted information and will add additional burdens on the OEM that will drive up the cost of information.

BMW agrees with the Alliance and AIAM adding that third-party providers will always be in the marketplace and EPA should not force the issue.

NADA commented that while third-party training providers should be encouraged to contract with OEMs, EPA has no authority to mandate OEM-third-party relationships.

The ETI commented that technicians will continue to rely on third parties because they can provide the information at a lower cost and standardized format, and provide a broader coverage of the American fleet.

J&J Automotive commented that this is the single most dangerous thing in this document. J&J Automotive commented that if an OEM is allowed to charge a "reasonable" up front fee and

then charge a “per use” fee as suggested by EPA, OEMs can then effectively dictate class sizes or fees that any instructor would be required to charge. J&J Automotive further commented that this would increase the cost for the aftermarket, who already face high costs for training. These fees, combined with EPA’s proposed information access fees could prove to the “last straw” for some small shops.

ATTS commented that technicians need access to OEM training materials at prices comparable to other aftermarket training and propose that this training material be provided to organizations such as CAAT and ATMC for distribution and verification.

ASA commented that third-party information providers are an integral part of the independent repair community and that the regulations should establish a mechanism for them to acquire the information.

Ultimate Cars commented that the rule should include language to guarantee that all training information is available including actual transcripts of course lessons.

AASP commented that the training requirements should be much more definitive to ensure that Web site or third party training packages will also be available to the aftermarket.

STS commented that they support EPA’s proposal to make training information available to third parties training providers. STS further commented that, while providing materials for l996 and later model years may be difficult, it is necessary to ensure that aftermarket service providers can make effective emissions-related repairs.

Clarke Automotive Systems commented that training information must be “available and reasonably priced” so the consumer maintains their right to choose in a competitive market place.

12.3 Response to Comments

12.3.1 Purchase of Training Materials from OEM Web Sites

EPA will finalize a provision that requires all OEMs 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. Additionally, 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.

While we disagree with the comments that there would be little demand for video tapes of OEM classroom training, we do agree that the cost of producing these courses could impede their ability to be made available at a reasonable cost. We also understand that a hands-on training program may be of lesser use if it is only available on video tape. We also fully support the efforts of the National Automotive Service Task Force (NASTF) to more directly address training related issues in the aftermarket through their training subcommittee. Therefore, we will not finalize a provision that would require OEMs to tape the emissions-related class room training provided to dealerships and make those tapes available for sale on OEM Web sites.

We disagree with the comment from NADA that the rule should not mandate access to

training information because the statute does not explicitly mention training information. Section 202(m)(5) requires manufacturers to provide any and all information needed to make use of the emission control diagnostic system and such other information including instructions for making emission related diagnosis and repairs. The statute in particular requires any such information that is provided to dealerships also be provided to the aftermarket. The information in the docket, makes it clear that training information, in particular that manufacturer-specific training information, is a critical component of the information needed for technicians to use the diagnostic system and to diagnose, service and repair vehicles. This information, which is provided to dealerships, is therefore well within the type of information covered by section 202(m)(5).

12.3.2 Third Party Access to OEM Training Material

Contrary to comments submitted by the Alliance and AIAM, BMW, and NADA it is not EPA's intent to force OEMs to enter into business arrangements with any entity that declares themselves a third-party training provider. Nor is it EPA's intent to force OEMSs into any business arrangement that would jeopardize OEM copyrighted information or one that is not "freely negotiated" between the OEM and the third party training provider. We clearly stated in the preamble to the June 8, 2001 proposal that, while OEMs could not charge unreasonable up-front fees for the access to these transmissions, OEMs would be able to receive fees or other royalties for the use and distribution of the information. There is also nothing that would preclude OEMs from entering into business arrangements that would allow them to protect the copyrights of any information released to a third party training provide, and to refuse to enter into business arrangements with parties that would not agree to take steps to protect those copyrights.

The intent of this proposed provision is to provide one potential solution to a long standing issue between the OEMs and aftermarket service providers on access to OEM-specific training. Aftermarket service providers have long expressed interest in direct access to OEM-specific training, and the need for OEM-specific training to diagnose, service and repair vehicles. However, OEMs have stated for many years and have reiterated in their comments here, that they do not have the resources to support conventional (i.e. classroom) training directly to the aftermarket, a statement with which EPA agrees. However, since OEMs provide this training directly to their dealerships, EPA believes it is appropriate to ensure that aftermarket service providers have a reasonable opportunity to receive similar training, if not from OEMs directly, then from third parties, particularly when it puts little or no burden on them directly, and may even provide additional streams of revenue for OEMs.

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 that 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 regulation. 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 of on a per-use or enrollment subscription basis.

SECTION 13: Reprogramming of Pre-SAE J2534 Model Year Vehicles

13.1 Summary of Proposal

In order to make reprogramming capabilities available to the aftermarket for the broadest range of model years possible, we proposed a two-tiered approach. The first tier applied to MY1996 through MY2002 OBD equipped vehicles with reprogramming capability. EPA proposed that, for those vehicles without SAE J2534 capacity, OEMs make available all emissions-related reprogramming information to aftermarket tool and equipment companies in a similar manner to the information that manufacturers currently make available for enhanced diagnostics.

13.2 Summary of Comments

The Alliance and AIAM commented that the reprogramming requirement for MY1996 through MY2002 vehicles would significantly increase the risk of vehicle calibration/emissions tampering. Further, it may be impossible to reconstruct the software specifications for older systems and finally, experience has shown a very limited demand in the aftermarket since most reprogramming occurs during the first year of a vehicle's life when most service is performed by dealerships within the vehicle warranty period. For these reasons the Alliance and AIAM recommend eliminating this provision from the final rule.

The Alliance and AIAM further commented that the requirement for Pass-Thru

Reprogramming using SAE J2534 is a positive step toward reducing the cost of tools to the aftermarket citing the task force efforts to assure that the interface can be used on many older vehicles with very little increase in cost. However, because of hardware incapabilities for some OEM models, there will still be vehicles for which the SAE J2534 interface will not work. As a result, OEMs will still need to make available their manufacturer tools in order for the aftermarket to reprogram these vehicles. The Alliance and AIAM also commented that the information that the tool companies would need to "unlock" the PCM and download software could be used to download any software to the vehicle, increasing the possibilities for tampering. The Alliance and AIAM commented that the current rule requiring manufacturer tools to be available to the aftermarket for reprogramming vehicles is adequate. Hence, the Alliance and AIAM concluded that EPA's additional proposed requirement to release information to tool manufacturers so that they can build reprogramming tools for 1996 through 2002 model year vehicles is not necessary.

ETI commented that they support EPA's full proposal on reprogramming. ETI commented that reprogramming in the aftermarket will become a high demand service as the current reprogrammable fleet begins to age and affordable reprogramming tools become more available to the aftermarket that will allow reprogramming of multiple makes and models. Additionally, there will always be instances when computers (i.e. ECUs) need to be replaced and reprogrammed by the aftermarket even if calibration updates diminish over time. With regards to the EPA's proposed release of information to tool companies to incorporate reprogramming capabilities for 1996 through 2003 model year vehicles, ETI commented that OEMs have known since 1994 that the requirement was coming and that it would apply to 1996 and newer vehicles.

ETI commented that OEM claims that they should not provide reprogramming information to tool companies for pre-SAE J2534 vehicles because of hardware incompatibilities is not a valid argument. ETI commented that these concerns were raised by OEMs at least two design cycles ago, yet their systems have been designed with the same flaws as the old systems. ETI further commented that if the manufacturers prevail there will not be across the board reprogramming capabilities in the aftermarket until 2007, 13 years after the OEMs were told they would have to provide the information.

ETI also commented that their scan tool members are capable of determining whether reprogramming capability can be safely incorporated into their scan tools but the information must be available in order to make this determination. Additionally, ETI commented that there is no reason that equipment and scan tool companies can't build in the same level of security that an OEM has in their product. In addition, ETI commented that even though they have had six years notice, reprogramming tools for many OEMs are still difficult to purchase (with the exception of a handful) and in those cases where they are available they are not always affordable, citing one OEM who sells their scan tool for $20,000 plus. Further, ETI commented that even though there has been an understanding that reprogramming documentation for pre-SAE J2534 vehicles would be made available to scan tool manufacturers they are disappointed that the automakers are changing their position on this issue.

BMW agrees with the Alliance and AIAM comments calling for the deletion of any provision that would require OEMs to release information on the application physical interface. BMW is opposed to the release of this information 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 faced challenges in developing these reprogramming tools. In addition, BMW finds little demand for emission-only reprogramming and what demand there is can be satisfied by their OEM-specific tool. BMW also commented that the existing demand for reprogramming their 1996 and later model year vehicles is covered by both their tool and dealership reprogramming services. BMW questions the requirement to supply information to the aftermarket tool companies since no company is likely to make a good business case for such a limited market and since their tool is available for 1999 and model year vehicles and beyond. BMW also recommended that the regulation clearly state that in cases where SAE J2534 is applied to any model from l996 to 2002, a manufacturer not be required to provide the information of section (g)(11)(vii). BMW proposes that EPA add a new section (g)(11)(viii) which would read:

> *"For each and every model and model year from 1996 to 2002 {or relevant year} that a manufacturer chooses to make available SAE J2534 pass-through reprogramming, that manufacturer need not comply with section (g)(11)(vii).*"

ATTS commented that reprogramming is essential to the repair of OBD II failures and that the aftermarket needs access to all tools at a reasonable cost to prevent a "ping pong effect" for the consumer and repair facilities. ATTS also commented that standardized reprogramming procedures and interfaces for pass-through and off-car reprogramming will eliminate the need to

purchase and constantly upgrade multiple interfaces.

The Aftermarket Consortium commented that sections 86.094-38(g)(11) and 86.1808-01(f)(11) of the proposed rule are critical if the aftermarket service technician is to have the same ability to repair vehicles as the dealership technicians. The Aftermarket Consortium further commented that many of the repairs to emission-related parts are made entirely through reprogramming changes or by reprogramming change in connection with a hard parts repair and without reprogramming the repairs could not be accomplished. The Aftermarket Consortium also states that the risk of tampering is not increased because the ability to reprogram can be provided without the knowledge of how it was done. The Aftermarket Consortium commented in strong support of this requirement which would be consistent with the CARB rule. The Aftermarket Consortium also noted that there is no time requirement for when this information must be given to the aftermarket.

STS commented in favor of requiring access to all reprogramming information that would permit the motorist to drive away after an OBD repair is made.

SEMA commented that it supports requiring the release of reprogramming data for pre-2003 model year vehicles for several reasons. First, many early systems require multiple reprogramming events to resolve driveability and other issues. Second, as vehicles age, it is imperative that the independent service facility offer comprehensive repair service on the same level as the dealerships.

13.3 Response to Comments

On the issue of reprogramming for pre-SAE J2534 model year vehicles (i.e 1996-2003 as finalized), EPA agrees with commenters such as SEMA, ASA, ATTS, AAIA, and STS that

affordable reprogramming capabilities must be available to the aftermarket for the widest range of model years possible. The proposal to require the release of certain OEM information to equipment and scan tool companies prior to the implementation of the pass-through reprogramming was EPA's attempt to ensure reasonable access to the aftermarket without placing undue burden on the OEMs. On this particular issue, EPA received comments reflecting total disagreement between the OEMs and the equipment and scan tool companies as to the appropriateness of EPA's proposal. OEMs commented that EPA's proposal would require the release of proprietary information that would jeopardize the integrity of the OBD system. OEMs were also concerned that scan tool companies did not have a complete understanding of the complexity of the information being requested and would have difficulty implementing reprogramming capabilities even if OEMs were willing to make the information available. On the other hand, equipment and scan tool companies argued that they are capable of integrating the safeguards into their applications that would protect the information provided to them and that they had the technical expertise to deal with the information being released to them. Because of the disparity in comments received, EPA met jointly with OEMs and equipment and scan tool companies to further discuss this issue on January 11, 2002 (see docket A-2000-49, document #IV-H-02 for a complete summary). The intent of the meeting was to explore technical options that might exist that would allow the aftermarket to have reasonable access to reprogramming capabilities for 1996 - 2003 model year vehicles without jeopardizing the information the OEMs consider proprietary. An open discussion at the meeting highlighted a simpler solution that a majority of OEMs present could support. OEMs who were present indicated that most of their vehicles would be reprogrammable with SAE J2534-like capabilities with the addition of a cable

that would allow the aftermarket to reprogram 1996 - 2003 model year vehicles. There was general agreement at the meeting that most OEMs could not only make their own cables available, but also make available information to scan tool companies to develop equivalent aftermarket cables. The OEMs stated that the information needed to produce the aftermarket equivalent of these cables is not proprietary and therefore poses no issues for them. The equipment and scan tool companies present at this meeting were also supportive of this approach. This solution eliminates the need for some OEMs to release information that would have been required to be released by the proposed provision that they have claimed is proprietary. This solution also reduces the amount of information needed by aftermarket tool companies to introduce affordable reprogramming technology for aftermarket technicians. Ultimately, EPA believes that this compromise meets the intent of the proposal which is to make affordable reprogramming capabilities available to aftermarket technicians prior to the implementation of SAE J2534 pass-through reprogramming. Therefore, EPA is finalizing a provision that specifically allows OEMs to use J2534 technology on 1996 -2003 model year vehicles as long as OEMs make all 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 as described in section 16 of this document. A full description of the information that must be provided under this scenario is described in section g(11) of the regulatory language for this rulemaking.

Regarding manufacturer claims that release of this information may increase the risk of tampering, manufacturers provide no evidence that this is a likely outcome of this process. Moreover, EPA had added language to ensure that manufacturers can take reasonable steps to protect confidential business information when it provides any information to equipment and tool manufacturers. Regarding the argument that providing this material to the aftermarket is unnecessary given that reprogramming capability is available through manufacturer tools, we disagree. As discussed above, it is not reasonable to put aftermarket service providers in the position of having to purchase multiple OEM scan tools in order to perform one repair. In addition, as other commenters note, it is likely that aftermarket service providers will increasingly need to receive this information in the future as vehicles with reprogrammable ECUs become older.

Regarding BMW's request to add a paragraph to make it clear that manufacturers of pre-2004 vehicles can meet the requirements of g(11) through use of SAE J2534, EPA does not believe such a new paragraph is necessary because the regulatory language has been revised slightly to make that point more explicit. 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, and they cannot make other additional hardware available to allow reprogramming. To further address BMW's comment, EPA will finalize a provision that allows that an OEM to propose an alternate solution for how the

aftermarket can perform this function if an OEM can demonstrate that a very small percentage of their vehicles cannot be reprogrammed using SAE J2534 or additional hardware , or that releasing the information to tool companies would likely not be incorporated into aftermarket tools. For example, an OEM may propose that they make available for purchase from a central distribution mechanism at a fair and reasonable cost a pre-programmed ECU that can be installed without the need to reprogram that ECU. In BMW's case, EPA believes it is unlikely that even if BMW released the information to the tool companies for the handful of 1996 through 1998 model year vehicles that may need to be reprogrammed, it is highly unlikely that any aftermarket scan tool company would design a tool to reprogram so few vehicles. BMW presented information to EPA that indicated that only 8% of its fleet for the 1996 through 1998 model year would be affected, and an even smaller percentage of these vehicles would need to be reprogrammed. Therefore, we believe that allowing OEMs to propose an alternate solution such as the example described above to the release of reprogramming information should address BMW's concerns about section g(11) of the proposed regulatory language.

In response to the comments submitted by the Aftermarket Consortium, we agree that we must include an effective date for this provision. Therefore EPA will finalize a provision that requires that the tools and information required by this provision must be made available 30 days after the effective date of the final rule for existing model years and within 90 days of vehicle introduction for new models.

SECTION 14: Reprogramming of Vehicles with SAE J2534

14.1 Summary of Proposal

EPA proposed that manufacturers comply with SAE Standardized Practice J2534 for

"pass-through reprogramming" for MY2003 and later OBD-equipped vehicles with reprogramming capabilities. We also proposed that manufacturers make available the necessary OEM software applications needed to initiate pass-through reprogramming events to the aftermarket at a reasonable cost. Initiation software can be described as the transport method used to transmit the OEM calibrations from storage to the pass-through device. In other words, the initiation software serves as a mechanism to transmit calibrations from where they are stored (Internet, BBS, or CD-ROM) to the ECU.

Manufacturers must also make available the necessary calibrations or reprogramming events via CD-ROM, diskette, or the Internet. We also propose that this be stand-alone software that can be run on a standard PC and must use a standard operating system. In other words, EPA expects that manufacturers will not simply bundle the pass-through reprogramming software with other OEM software, re-package this OEM-specific software as an aftermarket version and charge a price that is not reasonable for the aftermarket.

14.2 Summary of Comments

The Alliance and AIAM commented that the proposed requirement that all MY 2003 and later OBD vehicles equipped with reprogramming capabilities comply with SAE J2534 will require additional lead-time for the manufacturers to comply. This additional time is needed for several reasons. First, the SAE specification is not yet complete (as of the time of the public hearing). Second, development and testing time is also needed to develop the calibration CD or other media which will function with the pass-thru reprogramming tool. In addition to engineering evaluations testing the systems in the field is necessary. Therefore, the Alliance and AIAM request the this requirement be effective for MY04 (consistent with the ARB requirement)

to allow time to resolve any remaining technical issues. The Alliance and AIAM also responded to a comment made by ETI at the public hearing citing concerns for the need to limit reprogramming times given the technical deviations allowed by SAE J2534. The Alliance and AIAM believe that ETI's concern is only applicable to some vehicles using CAN serial data link for reprogramming and points out that the SAE J2534 task force discussed this issue and does not foresee any concerns with the programming times which may increase slightly but will not be significant. Further, the Alliance and AIAM commented that there will be many examples where actual programming times with dealership tools will be longer than those with aftermarket tools due to the type of PC/J2534 connection.

ETI commented that there is no reason to delay the implementation of SAE J2534 since the OEMs have known about this requirement since 1994. Additionally, ETI commented that the SAE document is very close to completion and that there is no need for additional leadtime beyond the 2003 model year as it was proposed by EPA. ETI commented that if OEMs are allowed to provide reprogramming schemes that are different from those provided to their dealerships (based upon OBD system differences) allowances must be made to allow for longer reprogramming time periods. ETI suggests a statement in the rule that would not allow slower reprogramming rates in the future and would also limit the amount of time difference allowed on current systems.

SEMA commented in support of the proposal for pass-through reprogramming based on SAE J2534 citing a cost reduction based on using a standard PC-based platform. SEMA expressed concern that non-OEM calibrations may not be appropriately considered. SEMA also commented that section 86.094-38(g)(11)(iii) does not acknowledge the existence of valid non-

OEM calibrations; however, they must be accommodated to avoid problems of consumer acceptance of OBD scans as well as to preserve consumer choice.

BMW commented that they are concerned about who will be held accountable for pass-through reprogramming tools that do not work, which raises the question of how EPA will measure a manufacturer's compliance with this provision. BMW proposed two solutions to this issue. First, the manufacturer would choose one "reference tool" from a selection of tools available in the market. Second, the manufacturer would have access to a "Golden Tool", a reference design tool manufactured by an independent, non-commercial entity, certified as a standard tool by EPA with which all manufacturer's software and hardware must work. This later approach has been suggested by CARB in presentations to industry (ARB calls for "custom test equipment built exactly to ISO an SAE standards"). BMW commented further that they would like EPA to publically indicate that a manufacturer is not responsible for every tool in the market to work properly with the OEM Application Physical Interface (API).

The Aftermarket Consortium commented that they strongly support EPA's proposal to make reprogramming capability available to the aftermarket. However, the Aftermarket Consortium expressed concern that EPA did not state when reprogramming capability must be made available to the aftermarket. The Aftermarket Consortium recommended that EPA include language in the final rule that required OEMs to make available this capability within 30 days after the effective date of the final rule for existing model years and within 90 days of vehicle introduction for new models.

Volkswagen commented that they support the Alliance and AIAM comments suggesting an additional year of lead time for OEMs to implement the J2534 pass-through reprogramming

requirement. In addition, VW commented that EPA incorporate flexibility in the form of a waiver in order to accommodate any OEMs who may need some additional lead time to comply with this requirement.

14.3 Response to Comments

Given the timing of the finalization of the SAE J2534 standard (it was not finalized by SAE until February of 2002) and the timing of this final rule, EPA agrees with OEM comments that one additional year of leadtime is reasonable to allow OEMs to comply with this provision. In addition, the CARB service information rule finalized a provision that would require SAE J2534 beginning with model year 2004. For these reasons, EPA will finalize a provision that will require OEMs to comply with SAE J2534 for pass-through reprogramming beginning with model year 2004.

In addition, EPA agrees with the comments of the Aftermarket Consortium that EPA should specify the time frame for the release of this information. We believe that the suggestion made by the Aftermarket Consortium is appropriate and consistent with similar provisions throughout this rulemaking. Therefore, EPA will require that this information be made available within 30 days after the effective date of the final rule for existing model years and within 90 days of vehicle introduction for new models.

We also agree with VW's comment to include a provision that allows OEMs to request additional lead time to meet this requirement. Therefore, any OEM who cannot comply with SAEJ2534 beginning with model year 2004 may request one year additional lead time from the Administrator.

With regards to BMW's two proposed technical approaches to address some of their

concerns regarding the functionality of pass-through reprogramming tools, we believe these are valid suggestions that will help the entire industry deal with these issues. However, given the highly technical and preliminary nature of these proposals, we believe that they will be better dealt with in other forums that will allow EPA to engage all interested parties including the OEMs, aftermarket scan tool manufactures, and technicians. In fact, we are aware of several initiatives that are already underway to address some of these issues. Outside of this regulation, EPA is working with OEMs to implement a process as part of OEM vehicle certification to validate manufacturer specific scan tools for OBD functionality. We will work with OEMs to assess if there are other elements of scan tool evaluation that can be included with this process that is currently under development. As a result of this effort to validate aftermarket scan tools, EPA, CARB, OEMs and others are participating in a task force that has been formed by the Society of Automotive Engineers (SAE J1699-3) to develop a "Golden Scan Tool" mentioned in BMW's comments. The resulting standard will allow equipment and tool companies to design and implement a validation tool that can be used with any OBD-related equipment, including pass-through reprogramming tools. Depending on the outcome, EPA will determine to what extent any further SAE recommended practices should be incorporated into the service information regulations and/or our OBD requirements. In addition, there have been several discussions between aftermarket equipment manufacturers and OEMs within the OBD FACA Technical Workgroup's Scan Tool Group that have yielded documentation related to current issues and ensuring future standardization, along with fostering independent discussions and relationships between equipment manufacturers and OEMs.

In response to BMW's comments that EPA should publicly indicate that an OEM is not

responsible for making sure that every tool in the market work properly with the OEM API, we appreciate that many OEMs have expressed concerns in the past that there have been aftermarket accusations that OEMs are not complying with EPA and CARB regulations because they have purchased an aftermarket scan tool that may not contain certain expected functionalities. We also understand that this criticism could extend to the pass-through reprogramming tools once they are made available. However, OEMs are only required to provide the requisite information to scan tool companies and are not responsible for an aftermarket equipment and tool company who chooses not to include information provided by the OEM. We do agree that there are some misperceptions and expectations that exist in the aftermarket with regards to generic aftermarket scan tools and we believe that this particular issue can be addressed by the numerous outreach efforts underway by organizations such as STS and the National Automotive Service Task Force (NASTF) to educate and inform aftermarket technicians as to OEM regulatory obligations and aftermarket scan tool company discretion in their tool design.

SECTION 15: Availability of Reprogramming Services from Franchised Dealerships

15.1 Summary of Proposal

We proposed that manufacturers make reprogramming services available to aftermarket service providers in a timely manner and a reasonable cost via their dealerships. We proposed this provision to ensure wide-spread availability of reprogramming capability for aftermarket service providers.

15.2 Summary of Comments

The Alliance and AIAM commented that EPA's proposal to require OEMs to be responsible for ensuring that the dealerships provide reprogramming services at a fair and

reasonable cost and in a timely manner to aftermarket service providers is not reasonable. The Alliance and AIAM commented that EPA does not specify the meaning of the terms "fair and reasonable" and "in a timely manner" and furthermore, EPA does not have the authority under the Clean Air Act to adopt such a provision and that it should be deleted from the final rule.

NADA commented that the current requirements for OEM's who make reprogramming available to dealerships, i.e., offering reprogramming tools or information to aftermarket tool companies are more than adequate to address all vehicles in need of emission-related reprogramming. Further, NADA objects to any attempt to control OEM dealership programming services and it would be unfair to dealers and other service facilities who have already purchased tools to mandate that they provide past model year reprogramming information to third party and equipment manufacturers. NADA commented that the cost of reprogramming services is governed by the marketplace and the timeliness of these services is (and will be) a function of shop workload and backlog. NADA claimed that EPA has no authority to require OEMs to control dealer services. Therefore, these sections of the proposed rule should not be finalized.

BMW provided comments indicating that they have no contractual arrangements with their dealers to require them to provide services to anyone that seeks them.

SEMA believes dealerships must be required to offer reprogramming to authorized service providers as well as the general public so as to accommodate persons or businesses not wishing to purchase a scan tool or SAE J2534 equipment. The dealership would have a competitive advantage in being able to offer more comprehensive repair services options and would simply be offering a service to those choosing to obtain an ECU from a different source. SEMA commented that this option is needed to ensure competition allowing consumers and

independent repair facilities a greater flexibility.

Ultimate Cars commented that prior to the time independent repair facilities have full diagnostic and reprogramming capabilities, OEM dealers should be required to supply those services within a reasonable period of time, i.e. two days, or face some type of sanction.

15.3 Response to Comments

While EPA agrees with SEMA comments that such a provision could be useful to the aftermarket, we understand OEM concerns about the practicality of implementing such a provision at their dealerships. In addition, we believe that the affordability and availability of pass-through reprogramming tools will improve the ability of the aftermarket to provide reprogramming services to their customers. Therefore, EPA will not finalize this provision.

SECTION 16: Availability of Enhanced Information for Scan Tools

16.1 Summary of Proposal

16.1.1 Description of Enhanced Diagnostic Information

We proposed to require an increased level of enhanced information to be made available to aftermarket tool and equipment 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 manufacturer's brand of tools and equipment. Generic service and repair information

is defined as information which is not specific for an original equipment manufacturer'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. Manufacturers 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) Electronic Control Unit (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.

16.1.2 Distribution of Enhanced Diagnostic Information

We proposed that the required information be provided to aftermarket tool and equipment companies in English via the Internet to a secure Web site as arranged through necessary licensing, contractual, and confidentiality agreements between the OEMs, ETI, and/or their member companies. We proposed that this information be uploaded in electronic format using common document formats such as Microsoft Excel, Adobe Acrobat, Microsoft Word, etc as preferred by the manufacturer. We stated that we believed that ETI's TEK-NET library met the intent of this proposed requirement and we encouraged manufacturers to continue the on-going, cooperative relationship.

We also proposed in the preamble that the Administrator have free unrestricted access to this Web site in order to assist EPA in the verification that all required information is being made available as required by these regulations.

Finally, ETI must provide information to equipment and scan tool companies who are not members of ETI involved in the manufacture and sale of scan tool type devices for use on vehicles sold in the United States if the non-members have arranged for the appropriate licensing, contractual and confidentiality agreements with the OEMs and ETI.

16.2 Summary of Comments

16.2.1 Description of Enhanced Diagnostic Information

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

The Alliance and AIAM commented regarding EPA's proposal that data stream information 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. They 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) appear to be contradictory. In section (g)(11), 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 (12)(ii) seems to intend that OEMs provide information for generic scan tools to work with l996 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.

16.2.2 Distribution of Enhanced Diagnostic Information

The Alliance and AIAM commented that the NPRM reflects a misunderstanding of the 1995 regulations regarding whether equipment and tool manufacturers are "covered persons". The Alliance and AIAM also commented that including a definition of equipment and tool manufacturers changes the status of tool manufacturers without justification or legal authority. In 1995 regulations, EPA only mentions equipment and tool manufacturers in certain sections. No information is *required* to be made available to tool and equipment manufacturers as long as OEMs make their own tools available for sale. Further, the Alliance and AIAM commented that EPA does not have the authority to change the scope of "covered persons" to include all equipment and tool manufacturers and that section 202(m)(5) of the Clean Air Act limits EPA's authority to provide information to "any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines."

The Alliance and AIAM also commented in agreement to provide the information in English but in opposition to any requirement to deliver information in any specified format (i.e., electronic) or the establishment of a special Web site for the sole benefit of any parties other that the service technicians. They further commented that because the only benefit of providing the

information in this manner would be to support ETI and improve profits of third party tool providers it is unreasonable to require one industry to expend resources to improve the profits of another. Hence use of a clearinghouse such as ETI should not be a requirement. The Alliance and AIAM state that it is beyond EPA's authority to dictates business practices and therefore, are in opposition to provisions designed to improve profits of another industry and recommend that EPA delete these proposed requirements.

BMW provided comments agreeing with the Alliance on this point and noted that some equipment and tool manufacturers may like a Web-based format, but many may not. BMW commented that EPA should allow this to be resolved between the individual OEMs and the equipment and tool companies they work with.

On section (g)(12) and number 16 of the Alliance comments, ETI states that they are not sure what the Automakers are asking for in this section but it appears as though they are asking that they not be required to provide enhanced diagnostic scan tool documentation, if this is accurate than the whole process would be set back 10 years and would cripple the aftermarket. In their comments on section (g)(12)(i) and reflecting on the Alliance comments ETI commented that ETI as a non-profit organization is attempting to provide a service to the Automakers and to EPA. They stated that the TEK-NET Library is an expense, not a profit center. They are asking that documents be sent to ETI in an electronic format using Microsoft Word, Access, Excel, or Acrobat. This will allow easy storage of the documentation and allow moving it to the qualified and licensed people who use it. ETI further commented that if the TEK-NET library is not used, EPA will find it difficult to determine whether or not data has been submitted and whether it is complete or not. Each data error and each lack of information complaint will have to be handled

between each individual OEM, EPA, and each individual scan tool company. This will require more manpower and expense from everyone. ETI commented that this is not conspiracy but rather ETI attempting to help make the task of providing the documentation easier. In addition, ETI states that there are instances where scan tool manufacturers are forbidden to disclose or otherwise communicate to any third party, including EPA, information about either the specific items and provisions of their agreement or any proprietary information or materials delivered to the licensee which will make it impossible for EPA to determine whether pricing is fair and reasonable. ETI further commented that there will be no provision for the Administrator to determine OEM completeness of the documentation because only the aftermarket scan tool engineers that use the information can determine its accuracy and they will be under contract to remain silent. ETI urges EPA to keep this requirement in the regulation.

16.3 Response to Comments

16.3.1 Description of Enhanced Diagnostic Information

We agree with the Alliance and AIAM comments that EPA should clarify that only data stream information required for diagnostic purposes, and not the redundant data stream information used for normal operation, needs to be made available to equipment and tool companies. It was EPA's intent to only require the release of the emissions-related subset of OEM's data steam information. This emissions-related information is used by the OBD system and is provided to an off-board diagnostic scan tool for the purpose of emissions-related service or repair. Therefore, the definition of data stream information has been revised in sections 86.096-38, paragraph (g)(2)(ii)(C), and 86-1808-1, paragraph (f)(2)(ii)(C) to clarify EPA's intent to only require the release of emissions-related data stream information.

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 certain information available to equipment and scan tool companies to allow for the incorporation of 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 a more descriptive list of information that OEMs must make available to aftermarket companies beyond the generic requirements of the 1995 regulations. 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 regulations 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. In the past, OEMs have interpreted the level and the types of information that were required to be provided to aftermarket scan tool companies in different ways. This created non-continuity where some OEMs provided necessary pieces of information but at a basic level, other companies provided non-relevant pieces of information, and other companies were able to determine and meet the correct level and types of information that were necessary for the aftermarket scan tool companies. Due to this an undue and unnecessary burden was placed on the aftermarket scan tool companies to design aftermarket scan tool content based on a moving target. Because of this, we have added more description to the enhanced diagnostic tool language in order to eliminate this confusion and relieve the burden of designing aftermarket scan tools. In addition, as technicians have advanced in diagnosing and repairing OBD-equipped vehicles, the desire for greater scan tool functionality has, and will continue, to increase. To avoid the situation of aftermarket technicians having to purchase each OEM-specific scan tool in order to get greater diagnostic capability, this list was expanded so that a greater capability can be incorporated in aftermarket scan tools. .

With regards 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 ("Generic and enhanced information for scan tools"), 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 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. The complexity of an OBD-equipped vehicle is not reduced once the vehicle is outside of the OEMs' warranty period and is more likely to be repaired outside of a dealership service network. Therefore, it is important that aftermarket scan tools be as functional as OEM specific scan tools for emissions-related diagnostics and repair procedures. We believe that the list of information we are finalizing today does not jeopardize OEM trade secrets and does not require the incorporation or release of any elements deemed proprietary by OEM. The information required under section (13)(ii)(A-D) simply describes basic scan tool functions such as communication protocols and timing, special PINs or voltages, and other basic information needed to interpret

data from the ECU. While there is some variation among OEMs in how this information exists in each of their scan tools, this information is not considered as trade secrets and we have not received information indicated that this information should be protected as such. 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) Electronic Control Unit (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.

16.3.2 Distribution of Enhanced Diagnostic Information

As with service information developed by third-party information providers, we believe that a majority of aftermarket shops to a great extent depend on aftermarket scan tools to service, diagnose and repair vehicles. The intent of this provision is to ensure equipment and tool providers get accurate information in a timely manner from those OEMs to which they pay for information.

In response to the Alliance and AIAM comments regarding whether equipment and tool

companies are “covered persons”, EPA does not agree with the comments. First, the term “covered persons” is one that is used by the California Air Resources Board (CARB) in their regulations to describe individuals or entities who are entitled to information required by their regulations. EPA does not use this term in any regulatory fashion, but instead has a requirement that information be provided to persons engaged in the repair or service of motor vehicles and a regulatory section termed “definitions” which provides a reader with context as to the individuals or entities who may be impacted by the corresponding regulations. As the Alliance and AIAM comments note, EPA is removing the option available in the 1995 regulations of allowing OEMs to either make information available to equipment and tool companies OR making their OEM tool available for sale to meet the scan tool requirement. In today’s action, EPA is requiring OEMs to do both. EPA is doing this to ensure to ensure that the aftermarket can have more cost effective access to at least some enhanced diagnostic capabilities in aftermarket scan tools.

While equipment and tool manufacturers are not directly engaged in service or repair operations, EPA believes that the tools provided by equipment and tool manufacturers are critical to the ability of aftermarket technicians to effectively service and repair vehicles. The evidence in the record is clear that, because aftermarket technicians generally service vehicles manufactured by several manufacturers, they are less able to rely on OEM tools than are dealers, which concentrate on servicing a single manufacturer’s vehicles. The record shows that requiring aftermarket service technicians to purchase multiple tools from multiple manufacturers can be prohibitively expensive and puts aftermarket technicians at a competitive disadvantage to dealerships. EPA has placed a list of OEM scan tools and their current prices that are currently available to the aftermarket in the docket for this rulemaking (EPA Air Docket A-2000-49, item

number IV-H-04). The experiences of aftermarket technicians over than past few years, when manufacturers could meet these regulations by merely making their tools available, shows that this approach has been unsatisfactory for much of the aftermarket. Some examples of the difficulties faced by the aftermarket can found in EPA Air Docket A-2000-49, Item #IV-H-03.

In order to ensure that generic tool manufacturers can effectively manufacture these tools, EPA must require that manufacturers provide this information to equipment and tool manufacturers. This is fully within the letter and purposes of section 202(m)(5), which is designed to ensure that service providers are provided promptly with the information they need to diagnose, service and repair vehicles. This requirement will help ensure that aftermarket service providers have reasonable access to the information that is ultimately used to service vehicles. OEMs will be able to protect their intellectual property rights, through contractual, licencing, or other appropriate arrangements and they are not required to provide information to equipment and tool companies with which it has no such arrangements.

We disagree with AIAM and Alliance comments that a provision requiring the electronic distribution of information to equipment and tool companies only to pad profits of those companies. The Alliance and AIAM provide no evidence or discussion that supports their claim that this provision would increase the profits of the equipment and tool providers. However, we believe that it is not necessary to finalize a provision that would require Web to Web transmission of the required information. We believe it is sufficient to simply require the OEMs to supply the required information in electronic format, which in turn, for example, can be uploaded by ETI onto their TEK-NET library for redistribution, or in a manner agreed to in equipment and tool company licensing arrangements with individual OEMs.

Therefore, we are finalizing a provision that the required information shall be provided to equipment and tool companies in electronic format using common document formats such as Microsoft Excel, Adobe Acrobat, Microsoft Word, etc or as arranged between the OEMs and the equipment and tool companies . Further, we would like to make it clear that any OEM licensing or business arrangements with third party information providers are subject to a fair and reasonable cost determination as discussed in section 8 of this document. In other words, we expect that OEMs will develop pricing structures for access to this information that make it affordable to any equipment and tool company with which they do business.

We are not finalizing any provision that would require OEMs to enter into licensing and royalty agreements with every equipment and tool company. We are, however, finalizing a requirement that would require OEMs who otherwise have licensing or other formal business arrangements with equipment and tool companies to make the information available electronically using common document formats as arranged through necessary licensing, contractual, and confidentiality agreements between the OEMs, ETI, and/or their member companies.

To the extent that a central repository for this information (e.g. the TEK-NET library develop the Equipment and Tool Institute) is used to warehouse this information, the Administrator shall have free unrestricted access to this information. In addition, the information required shall be made available to equipment and tool companies who are not otherwise members of any central repository for the information shall have access if the non-members have arranged for the appropriate licensing, contractual and confidentiality arrangements with the vehicle manufacturer.

SECTION 17: Availability of OEM-Specific and Aftermarket Diagnostic Scan Tools

17.1 Summary of Proposal

17.1.1 Availability of Manufacturer-Specific Diagnostic Scan Tools

We proposed that OEMs make their OEM-specific tools available for sale to the aftermarket at a reasonable cost. With a few exceptions, we believe that most manufacturers who currently make their OEM-specific tools available meet the intent of reasonable cost. We expect that the cost of OEM-specific tools should not change significantly as a result of this proposed provision.

17.1.2 Decontenting of OEM-specific Tools

EPA proposed that the emission-related information in the tool be identical to that contained in the tool offered to the dealers. In such cases, we proposed that OEMs obtain approval from the Administrator following demonstration that the emission-related functions of the dealer tool and the decontented tool are the same.

17.1.3 Availability of Special Tools

Some OEMs currently require the of use a special tool to extinguish the MIL. It is our understanding that these tools are not always available to the aftermarket, which would apparently violate the regulations promulgated in 1995. To address this issue more directly, EPA proposed that OEMs be precluded from using such systems beginning with model year 2002. For model years 1994 - 2001, EPA proposed that OEMs who require such tools to extinguish the MIL make the necessary information available to equipment and tool companies to design a comparable generic tool. It was proposed that this information be made available no later than 3 months following the effective date of the Final Rule.

17.2 Summary of Comments

17.2.1 Availability of Manufacturer-Specific Diagnostic Scan Tools

No comments were received on EPA's proposal to require that all OEMs make available their OEM-specific diagnostic scan tool available for sale to the aftermarket. However, we did receive comment from ASA stating that the OEM scan tools made available by some OEMs are cost prohibitive to all but the largest specialty shops. ASA commented that any discussion of "fair and reasonable cost" should include the cost of OEM specific tools.

17.2.2 Decontenting of OEM-specific Tools

No comments were received on EPA's proposal on the decontenting of OEM-specific tools.

17.2.3 Availability of Special Tools

No comments were received on EPA's proposal regarding the availability of special tools.

17.3 Response to Comments

17.3.1 Availability of Manufacturer-Specific Diagnostic Scan Tools

EPA will finalize this provision as proposed. OEMs must make available for sale to interested parties the same OEM-specific scan tools that are available to franchised dealerships, except as discussed in section 17.3.2 below. EPA agrees with ASA comments that these tools must be made available at a fair and reasonable price. To ensure that this is the case, EPA will finalize a list of parameters that it will take into consideration when assessing the cost of OEM specific tools. These parameters include, but are not limited to, the following:

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

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

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

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

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

(vi) Inflation

These tools shall also be made available in a timely fashion either through the OEM Web site or through an OEM designated intermediary.

17.3.2 Decontenting of OEM-specific Tools

EPA will finalize this provision as proposed. Any OEM who chooses to remove any or all non-emissions related information and functionality from their OEM-specific tool must submit to the Administrator a statement of compliance that the decontented tool that is being made available meets the requirements of this regulation and that the emission-related functions of the dealer tool and the decontented tool are the same. OEMs must also demonstrate to the Administrator that the price of the tool has been adjusted to reflect the decrease in content.

17.3.3 Availability of Special Tools

EPA will finalize this provision as proposed, with the exception of model year applicability. Because of the timing of the final rule, we believe it is appropriate to allow one year additional lead time to meet this requirement. Therefore, OEMs are precluded from using such systems beginning with model year 2004. For model years 1994 - 2003, OEMs who currently require such tools to extinguish the MIL must release the necessary information to equipment and tool companies so they may design a comparable generic tool. This information

shall be made available no later than 3 months following the effective date of the Final Rule.

SECTION 18: Materials for Incorporation by Reference

18.1 Summary of Proposal

EPA proposed the adoption of SAE Recommended Practice J1930, "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms." This standardized procedure was proposed in the September 1991 (56 FR 48272) proposal, but was not finalized in that rule due to a variety of issues on the standardization of the electronic format of service information. This SAE practice standardizes the terms, abbreviations, and acronyms used to convey service information in literature as well as scan tools. EPA proposed that manufacturers comply with J1930 beginning with the 2003 model year. EPA believed that most manufacturers have already adopted J1930 in the development of their service information. However, the Agency stated that it is important for all manufacturers to adopt J1930 definitions and terminology given the increasing complexity and volume of service information.

EPA also proposed the incorporation of SAE Recommended Practice J2284/3 (FEB 99), "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS." This recommended practice was finalized in February of 1999 and defines a level of standardization in the implementation of a 500 KBPS vehicle communication network using the Controller Area Network (CAN) protocol. EPA proposed that manufacturers comply with J2284 beginning with the 2003 model year. EPA also stated that most manufacturers are moving toward the adoption of J2284 with model year 2003 and EPA believed that there will be little objection from the manufacturers on this requirement.

EPA also proposed to Incorporate by Reference SAE Recommended Practice J2534

(February, 2002), "Specifications for Pass-Through Reprogramming", and SAE Recommended Practice J1962 (February, 1998), "Diagnostic Link Connector", for the purposes of pass-through reprogramming. The SAE J2534 practice standardizes the use of reprogrammable memory technology in vehicle electronic control units (ECUs). The SAE J1962 practice standardizes the location of the OBD diagnostic link connector.

18.2 Summary of Comments

AASP submitted written comments supporting the incorporation of J1930 in order to improve consistency across OEMs in how they present their service information.

The Alliance and AIAM, and BMW submitted written comments opposing the incorporation of J1962. One OEM uses an OEM-specific protocol for reprogramming rather than J1962. The issue was resolved by the SAE committee responsible for the SAE J2534 specification by incorporating the OEM-specific protocol directly into SAE J2534. The OEM in question intends to use J1962 for the purposes for reprogramming when it phases in the high speed CAN requirement, but this OEM has not determined by which model year this will occur. Therefore, the Alliance and AIAM recommend deleting this provision. The Alliance and AIAM further commented that if EPA believes it needs to include SAE J1962 in this regulation, it should not include an implementation date.

The Alliance and AIAM, and BMW submitted written comments opposing the incorporation of J2284. These commenters suggested that requiring the CAN protocol is an issue that pertains to OBD requirements not service information requirements. In addition, CARB is going to require its use in its revised OBD II requirements by the 2008 model year and allow its use beginning in the 2003 model year. BMW commented in support of the Alliance and AIAM

comments. STS submitted comments in support of incorporating SAE J2284.

Comments were also received on incorporating SAE J2534. The Alliance and AIAM, BMW, and Volkswagen commented that, while they support the incorporation of SAE J2534, they believe it is appropriate for EPA to move the implementation date from model year 2003 to model year 2004. These commenters stated that this SAE protocol was just recently finalized and therefore additional lead time is necessary for OEMs to comply. In addition, a model year 2004 implementation date is consistent with what is required by CARB.

SEMA also commented in support of incorporating SAE J2534. However, SEMA reiterated its concern that the non-OEM calibrations must be accommodated in order to ensure complete success of SAE J2534 for pass-through reprogramming.

ETI also commented in support of incorporating SAE J2534. However, ETI commented that OEMs have known about the SAE J2534 requirement for quite some time and that no additional lead time is necessary to implement this requirement.

ETI also commented that EPA should incorporate all of the corresponding ISO documents into the regulation. ISO documents are the international versions of SAE documents and are developed by the International Standards Organization.

18.3 Response to Comments

EPA will finalize a provision requiring that OEMs comply with SAE Recommended Practice J1930, "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms." beginning with the 2004 model year.

With regards to SAE Recommended Practice J1962, “Diagnostic Link Connector”, EPA proposed this requirement to go hand in hand with the SAE J2354 requirement for pass-through

reprogramming. The intent of SAE J2534 is to allow a highly standardized method for reprogramming. We were concerned that if we did not limit the use of vehicle connectors to J1962 for the purposes for reprogramming, the OEMs may have designed a separate connector or utilized another connector other than the SAE 1962 which minimize the effectiveness of the pass-through reprogramming requirement. However, the SAE committee responsible for developing SAE J2534 shared EPA's concern and has incorporated language directly into the SAE specification that would prohibit the use of any other connector for the purposes for reprogramming. EPA believes that this addresses any concerns we had for connector location and therefore do not need to finalize any reference to J1962 in this regulation.

With regards to SAE Recommended Practice J2284, "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS," EPA had long planned to incorporate the SAE practice into this rulemaking rather than our federal OBD requirements because it is related to access to information by service providers. Though it is possible that this reference could equally be placed in the OBD provisions of the regulations, we believe it is more appropriate to include it here. However, 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.

With regards to incorporating SAE Recommended Practice J2534, "Specifications for Pass-Through Reprogramming", EPA agrees with OEM comments that it is appropriate to allow for additional lead time for the implementation of this SAE practice. Therefore, EPA will require that OEMs comply with SAE J2534 beginning with the 2004 model year.

Regarding ETI's comments to include the ISO equivalents of the SAE standards being

incorporated by reference, at this time we do not believe this is necessary or appropriate. In researching which of the ISO documents corresponded with the SAE documents we are Incorporating by Reference, we have discovered that the corresponding ISO documents are still in draft form and have not been finalized by the International Standards Organization. In addition, our discussions with SAE indicate that there are very few differences between the SAE recommended practices and the ISO standards and that any of these minor differences have been incorporated into the updated final versions of the SAE documents we are including here. Upon finalization of the relevant ISO standards, we will determine at that time if it is necessary to include them in this regulation and take appropriate regulatory action to include them.

SECTION 19: Proposed Requirements for Heavy-duty Service Information

19.1 Summary of Proposal

EPA proposed that all of the proposed requirements apply to manufacturers of all heavy-duty vehicles and engines weighing less than or equal to 14,000 pounds gross vehicle weight (GVW) in model year 2005, which is the first year that such engines and vehicles are subject to OBD requirements. During the phase-in of those requirements, this provision applied only to engines and vehicles subject to the OBD requirements. EPA proposed the same requirements for these engines and vehicles as it proposed for light-duty vehicles and trucks. However, we requested comment on the appropriateness of the proposed requirements for this sector.

19.2 Summary of Comments

APRA and AERA commented that they support extending service information requirements to heavy duty vehicles and engines up to 14,000 pounds in the future. They also commented that we should further extend service information requirements to heavy-duty

vehicles and engines above 14,000 pounds.

MEMA commented at the public hearing that they enthusiastically support the extension of service information requirements to this category of engine. MEMA noted that heavy-duty vehicles are often serviced by independent service providers.

NADA commented that there is no need to require service information for heavy duty vehicles above 14,000 pounds (i.e. not those HDVs regulated as medium duty vehicles) until OBD is mandated for these vehicles. NADA commented that the heavy-duty service industry involves many different players and that this needs to be taken into consideration.

STS stated that access to information is as important to heavy-duty technicians as to the light-duty vehicle technicians, but notes that adding heavy truck requirements to the rule may delay implementation for light-duty vehicles. STS recommends expedited resolution to access for all vehicles.

The American Trucking Association (ATA) submitted comments supporting EPA's proposal to extend service information requirements to the heavy-duty sector. The ATA stated that the EPA's proposed extension of service information for the heavy-duty sector will promote competition among independent repair facilities and allow larger fleets the option of performing certain repairs in-house. The widespread availability of information will result in more repair options and faster repairs. The ATA also commented that they request that EPA consider, as part of a future rulemaking, a requirement to provide emissions-related service information for pre-2005 vehicles.

The Aftermarket Consortium stated their support for a provision that would require OEMs to make available service information to the heavy-duty sector.

The Alliance and AIAM commented in response to APRA and AERA that we should not apply service information requirements to vehicles above 14,000 pounds because that industry is significantly different than light-duty vehicles, with fewer and more product-specific shops. Also, the non-integrated nature of trucks above 14,000 pounds blurs the lines of responsibility for compliance.

19.3 Response to Comments

EPA will finalize the requirement that manufacturers 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.

SECTION 20: Other Comments Received

20.1 Non-OEM Calibrations

20.1.1 Summary of Proposal

EPA did not propose any provisions pertaining to non-OEM calibrations.

20.1.2 Summary of Comments

The Specialty Equipment Manufacturers Association (SEMA) commented that more attention should be given to vehicle calibrations that are not generated by OEMs. SEMA commented that several aftermarket companies generate calibrations as a stand alone product or to be used in conjunction with another product such as a supercharger. These calibrations are

currently subject to approval by the California Air Resources Board (CARB) and must otherwise not violate EPA's Memorandum 1A before they can be installed in vehicles subject to pollution control regulations. SEMA further commented that, while there are a significant number of companies who market approved calibrations, SEMA is concerned that these non-OEM calibrations will not be treated the same as OEM calibrations in terms of how they are accepted, validated and distributed. SEMA believes that non-OEM calibrations must be made available through the same distribution channels as OEM calibrations so that they may be obtained by the aftermarket without unnecessary burden.

According to SEMA comments, CARB is considering making such approved calibrations available directly from the CARB web site. SEMA believes that such a Web site should provide information on how such calibrations would be made available, and also on how they would be updated for things such as service campaigns and recalls and how the correct versions would be identified for acceptance during OBD checks in I/M programs. Any such provision may require OEM participation to ensure such calibrations would be compatible with OEM designs to prevent fraud and ensure proper installation. SEMA refers to its current cooperative arrangement with Ford Motor Company as a successful example of information sharing.

20.1.3 Response to Comments

EPA is aware that non-OEM calibrations are an important part of the entire aftermarket service experience and that there may be instances where aftermarket calibrations are preferred by some customers. We also acknowledge that the identification of aftermarket calibrations in I/M OBD checks may be an issue. However, EPA did not propose any provisions that require any specific distribution mechanism or approval of such calibrations and does not believe it is

appropriate to take any action on this issue at this time. EPA is aware that CARB is considering solutions to making this information available via their own or some other Web site. EPA will work with CARB and other interested parties to further explore the issues with regards to non-OEM calibrations and will consider the proper role for EPA on this matter at that time. EPA will not be finalizing any requirements with this rulemaking that would require OEMs to do anything with regards to non-OEM calibrations (needs to be more nicely worded).

20.2 Central Web Site for OEM Service Information

20.2.1 Summary of Proposal

EPA did not propose any provisions that would require a central Web site for distribution of OEM information.

20.2.2 Summary of Comments

Jerry Truglia of ATTS and the Westchester/Putnam County chapter of STS commented at the public hearing that, in addition to individual OEM Web sites, STS could house a central portal that technicians could log on to for access to OEM service information. Mr. Truglia commented that individual OEM Web sites may be confusing and time consuming for aftermarket technicians to navigate and that a central portal would provide many benefits for all interested parties. Mr. Truglia commented that STS would be able to gather information from technicians who encounter problems with incomplete information. In turn, this type of information can be evaluated and transferred to EPA. Mr. Truglia commented that a central portal run by STS would provide a way to protect both the aftermarket and OEMs from unfounded complaints.

20.2.3 Response to Comments

While we agree that there may be some advantage to a central Web site portal that may make it somewhat easier for the aftermarket and others to access OEM service information, we also believe that end-users will eventually become familiar with the look and feel of the individual sites and ultimately have no trouble learning to navigate OEM web sites. As with paper service manuals and other OEM information that is released either in paper or other formats such as CDs, there may be an initial learning curve that aftermarket technicians and others will go through as the sites are utilized. We believe this is no different than the current formats of available information which is designed and presented differently for each OEM. The aftermarket has learned to navigate these formats and we believe that the same will be true for OEM web sites. If OEMs and organizations wish to coordinate efforts and create these sorts of arrangements, nothing in our regulations would preclude them from doing so. However, OEMs are still responsible for meeting the provisions as finalized in section g(3) of the regulatory language. Moreover, OEMs are required to allow hyper-linking to their Web sites from other automotive-related Web sites. This may help facilitate the issue for aftermarket service providers.

20.3 Comments to Delay Finalizing Service Information Rule

20.3.1 Summary of Proposal

EPA did not propose any provisions that would delay implementation of the final rule

20.3.2 Summary of Comments

Mr. Barrett Smith of Brandon Paint and Body submitted written comments suggesting that EPA delay any legislative action until more small aftermarket businesses are informed of EPA's activities and can more fully comment on their potential impacts to their businesses.

20.3.3 Response to Comments

In spite of our best attempts to reach the broadest audience possible when soliciting comments on our regulatory activities, it is not always possible to reach everyone. This is particularly true of the automotive aftermarket which is comprised of tens of thousands of individuals and shops. However, EPA has communicated extensively in a variety of arenas including conferences, trade shows, trade magazines, trade organizations, etc to reach the largest and broadest audiences possible on our regulatory efforts regarding service information. While we may not have reached everyone, we believe that comments received on this rulemaking represent a wide range of aftermarket perspectives and comments on these issues and provides us with ample feedback to move forward with finalizing this regulation. EPA will continue to work with the automotive industry as a whole to improve communications on regulatory activities and other activities and initiatives that impact vehicle repair. EPA believes that the benefits of this regulation, particularly to the automotive aftermarket, as evidenced by comments from the aftermarket, justify the completion of this rule without further delay.

20.4 Compliance and Enforcement

20.4.1 Summary of Proposal

We did not propose any unique compliance or enforcement provisions.

20.4.2 Summary of Comments

Mr. Dave Scaler of the Mechanics Education Association (MEA) commented that, while he is in support of the changes being proposed by EPA, there seems to be a critical component missing. In particular, Mr. Scaler commented that EPA has not laid out a specific plan for the enforcement and auditing. Without a system in place (either via EPA or a third party) to audit

compliance, Mr. Scaler commented that information may not actually be available. Mr. Scaler commented that lack of consistent auditing is partly responsible for the lack of information that currently exists. Mr. Scaler commented that much of the auditing done today is by the aftermarket who try to find information. Once OEM Web sites are in place, the aftermarket will be in a position of having to pay to access OEM Web sites, only to find that what he/she is looking for is not there.

ASA commented that the OEMs must be held to the most stringent rules possible. ASA further commented that EPA has been too flexible in its implementation of the 1995 rule and that the proposed regulatory language on prohibited acts, liabilities and remedies presents EPA with a "second chance" to monitor and enforce its statutory obligation under the Clean Air Act Amendments of 1990. ASA also commented that they disagree with EPA's statement that all but one manufacturer satisfied the reprogramming requirement. ASA believes that more than one manufacturer has not supplied independents with the same opportunities as the franchised dealerships.

20.4.3 Response to Comments

EPA agrees that assessing OEM compliance with the final regulations is an integral part of information availability. EPA currently investigates any complaints received by the aftermarket and will continue to do so once the new regulations are in place. In addition, we will continue to work with the industry to identify gaps and potential non-compliance with the regulations and seek appropriate remedies to ensure maximum compliance. In addition, EPA will evaluate the feasability of a more formal auditing process and will issue additional guidance as necessary.

ASA does not provide any further evidence regarding the behavior of OEMs so EPA cannot verify ASA's contention regarding compliance with the reprogramming requirement.

20.5 General Comments Supporting This Rulemaking

20.5.1 Summary of Proposal

20.5.2 Summary of Comments

Mr. Trevor Samoil and Mr. Herb Wiley of Herb Wiley Motors submitted comments which voiced general support for this rulemaking.

20.5.3 Response to Comments

EPA thanks these commenters for their comments.

20.6 Miscellaneous Typographical Corrections

20.6.1 Summary of Proposal

20.6.2 Summary of Comments

J&J Automotive commented that there appears to be a typographical correction that needs to be in section II.A.1 of the preamble where EPA refers to the ASE L1 Preparation Guide as an effective example of the types of information that should be available. In the proposal, EPA writes that this guide is "an effective example of the types of information that should be available for all ***OEMs***"(emphasis added). J&J Automotive commented that it should say that the guide is "an effective example of the types of information that should be made available for the ***aftermarket***" (emphasis added).

BMW commented that there appears to be some typographical errors in several paragraph of section (g)(12). First, in section (g)(12)(ii), the word "information" appears to be missing between "enhanced" and "defined" in the phrase ....*to the generic and enhanced defined in*

paragraph...” . Second, in section (g)(12)(ii)(F), there appears to be an incomplete sentence. The passage asks for “which interfaces”, but does not answer the implied question “What do the interfaces do?”

The Aftermarket Consortium highlighted a number of typographical or references errors in both the preamble and regulatory language.

20.6.3 Response to Comments

EPA agrees that we incorrectly referred to OEMs in this portion of the preamble and that the reference should be changed to refer to the aftermarket as the recipient of the information.

EPA also agrees with BMW that word “information” is missing in section g(12)(ii) and that there is an incomplete sentence in section g(12)(ii)(F). These errors are amended in these portions of the final regulatory language.

We also agree with all of the observations made by the Aftermarket Consortium. The changes will be made in the final preamble and regulatory language to the extent that those sections still exist in the final rule.

20.7. General Comments on Reasonable Cost

20.7.1 Summary of Proposal

20.7.2 Summary of Comments

Vincent J. 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.

20.7.3 Response to Comments

Regarding the comment that EPA tie vehicle certification to releasing scan tool information at a reasonable cost, we agree that there may be some merit to this approach. However, many of the requirements of this regulation do not occur until after vehicle certification. Therefore, we do not believe tying certification to meeting these requirements is practical at this time. EPA agrees that the phrase "reasonable cost" is subject to considerable interpretation. Throughout the rulemaking EPA has gone to great lengths to further define its expectations and parameters of "reasonable cost" as is appropriate given the scope and authority of Clean Air Act Amendments of 1990.

20.8 Applicable Model Years for Generic and Enhanced Information for Equipment and Tool Companies

20.8.1 Summary of Proposal

In the proposed regulatory language, EPA refers to two different sections of the Code of Federal Regulations for the release of generic and enhanced information to equipment and tool companies. EPA proposed regulatory language for sections 86.096-38 (g)(12) and 89.1808-01(f)(12). In the proposed regulatory language, section 86.096-38 (g)(12) would apply beginning in 1996 while section 89.1808-01(f)(12) applies to 2001 and later model year vehicles.

20.8.2 Summary of Comments

The Alliance and AIAM submitted comments that EPA appears to have made an error in proposing that these sections apply to different model years. The Alliance and AIAM recommended that EPA only apply this requirement to 2001 and later model years for those manufacturers that have already provided this information for prior model years under one of the

two currently allowed alternatives in the 1995 requirements in section 86.094(g)(10 through 12).

ETI commented in response to the Alliance and AIAM comments that this provision should apply to 1996 and not just apply to 2001 and later model year vehicles. ETI further commented that even companies who have provided some information in the past have not necessarily provided complete and fully accurate documentation. Making this requirement apply to 1996 and later model years will help make corrections and fill in any remaining information gaps from those earlier model years.

The Aftermarket Consortium also commented that there is appears to be a difference in the model years to which this requirement applies given2 the structure of the regulatory language. Section 86.096-38 (g)(12) applies to 1996 and later model years while Section 86-1801-01(f)(12) applies to 2001 and later model years. The Aftermarket Consortium commented that both sections should apply to 1996 and later and see no reason or the later date in (f)(12).

20.8.3 Response to Comments

In response to the comments made by the Aftermarket Consortium, we believe that the Aftermarket Consortium mis-understood the structure of the regulatory language. This section of the Code of Federal Regulations (CFR) was re-structured with the implementation of the CAP 2000 regulations which put in place an entirely new sub-part S applicable to light-duty vehicles and light-duty trucks which takes effect with the 2001 model year. Because some of the provisions required by today's action apply to a wide range of model years, EPA must finalize regulations for both 86.094-38(g)(12) and 86.1808-01(f)(12). As discussed below, this provision does apply to 1996 and later model year vehicles, not just 2001 and later model year vehicles.

To further elaborate, EPA disagrees with Alliance and AIAM comments that EPA made

an error in the regulatory language. It was our intent to apply this provision for 1996 and later model year vehicles and drafted the regulatory language accordingly. We agree with ETI comments that this requirement must apply to 1996 and new vehicles, regardless of what information has already been provided under the 1995 regulations. In the 1995 regulations, EPA finalized rather generic requirement that OEMs release enhanced diagnostic information and data stream information to equipment and tool companies if they chose not to make their OEM specific tool available for sale. For the few OEMs who did release information rather than sell the tool, we found that there was a range of interpretation of what was considered enhanced diagnostic information. In turn, equipment and tool companies were not always able to incorporate enhanced diagnostic information into generic aftermarket tools. Based on these discrepancies, we proposed a more comprehensive list of enhanced diagnostic information in the June 2001 NPRM. Therefore, because of the increased level of information we are requiring by today's action, we believe that it is appropriate to require the release of generic and enhanced information for tool and equipment companies for all OEMs , regardless of what information they have already made available under the 1995 regulations. We believe that making this requirement apply to 1996 and later model years will allow equipment and tool companies to update current products and develop new products that are more functional and increase the ability of the aftermarket to service all 1996 and new vehicles in a cost effective manner. We do not believe that applying this requirement back to 1996 model year vehicles will pose any undue burden on OEMs. All OEMs will be required to make available enhanced diagnostic information available 30 days after the effective date of this rulemaking, including 1996 and later information, as opposed to 2001 and later information, on a CD-ROM for transmission to

equipment and tool companies should not be an issue.