

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

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

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

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

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

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

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

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

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

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

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

Web sites that meet the performance criteria described below:

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

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

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

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

D. Structure and Cost of OEM Web Sites

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

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

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

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

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

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

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

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