

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

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

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

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

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

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

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

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

E. Availability of Enhanced Information for Scan Tools

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

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

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

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

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

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

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

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

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

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

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

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

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