

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[DE001-1000; FRL-6988-2]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chemical Accident Prevention Provisions and Risk Management Plans; Delaware; Approval of Accidental Release Prevention Program**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing to approve the Delaware Department of Natural Resources and Environmental Control's (DNREC's) request to implement and enforce its accidental release prevention program in place of similar Federal requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's request for rule approval as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before July 9, 2001.

ADDRESSES: Written comments on this action should be sent concurrently to: Makeba A. Morris, Chief, Permits and Technical Assessment Branch, Mail Code 3AP11, Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029 and Robert A. Barrish, Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, DE 19720. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket

and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, Division of Air and Waste Management, 715 Grantham Lane, New Castle, DE 19720.

FOR FURTHER INFORMATION CONTACT:

Dianne J. Walker, 215-814-3297, at the EPA Region III address above, or by e-mail at walker.dianne@epa.gov.

SUPPLEMENTARY INFORMATION: For further information on this action, pertaining to the proposed approval of Delaware's accidental release prevention program (Clean Air Act section 112(r)), please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 16, 2001.

Thomas C. Voltaggio,*Acting Regional Administrator, Region III.*

[FR Doc. 01-14080 Filed 6-7-01; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 86**

[FRL-6992-7]

RIN 2060-AG13**Control of Air Pollution From Motor Vehicles and New Motor Vehicle Engines; Revisions to Regulations Requiring Availability of Information for use of On-Board Diagnostic Systems and Emission-Related Repairs on 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks and 2005 and Later Model Year Heavy-Duty Vehicles and Engines Weighing 14,000 Pounds Gross Vehicle Weight or Less****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of proposed rulemaking.

SUMMARY: Today's action proposes modifications to EPA's Service Information regulations for light-duty vehicles and trucks, including requiring vehicle manufacturers to; make full text emissions-related service information and training information available via the World Wide Web; provide equipment and tool companies with information that allows them to develop

equipment with pass-through reprogramming capabilities; make available enhanced diagnostic information to aftermarket scan tool manufacturers; make available manufacturer-specific diagnostic tools for sale to interested parties; and make available additional OBD technical information that manufacturers must provide. In addition, today's proposal requests comment on extending the availability of emission-related service information to heavy-duty engines and vehicles weighing 14,000 pounds or less beginning in the 2005 model year.

DATES: Comments must be received on or before August 7, 2001. A public hearing will be held on July 25, 2001. Requests to present oral testimony must be received on or before July 2, 2001.

ADDRESSES: Comments must be submitted to Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

The public hearing will be held at the Holiday Inn North Campus, 3600 Plymouth Road, Ann Arbor, MI. The hearing will begin at 10:00 a.m. and continue until all testimony has been presented.

Materials relevant to this rulemaking are contained in EPA Air Docket No. A-2000-49. The docket is located at The Air Docket, 401 M. Street, SW., Washington, DC 20460, and may be viewed in room M1500 between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260-7548 and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT:

Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, Telephone 734-214-4288, Internet e-mail "pugliese.holly@epa.gov," or Christine Mikolajczyk, 734-214-4403, Internet e-mail "mikolajczyk.christine@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:**Regulated Entities**

Entities potentially regulated by this action are those which manufacturer new motor vehicles and engines. Regulated categories include:

Category	NAICS Codes (1)	SIC Codes (2)	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers.

(1) North American Industry Classification System (NAICS).

(2) Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.099–17 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Rulemaking Documents Through the Internet

The preamble, regulatory language and regulatory support document are also available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for Internet connectivity. The official EPA version is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes these notices on the secondary Web site listed below.

- (1) <http://www.epa.gov/docs/fedrgstr/EPA-AIR/> (either select desired date or use Search feature)
- (2) <http://www.epa.gov/OTAQ/> (look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. What Is the Important Background Information for This Proposal?

Section 202(m)(5) of the CAA directs EPA to promulgate regulations requiring vehicle manufacturers to provide to:

Any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, * * * any and all information needed to make use of the [vehicle's] emission control diagnostic system * * * and such other information including instructions for making emission-related diagnoses and repairs.

Such requirements are subject to the requirements of section 208(c) regarding protection of trade secrets; however, no such information may be withheld under section 208(c) if that information is provided (directly or indirectly) by the manufacturer to its franchised dealers or other persons engaged in the repair, diagnosing or servicing of motor vehicles.

On August 9, 1995, EPA published a final rulemaking (60 FR 40474) which set forth the Agency's service information regulations. These regulations, in part, required each Original Equipment Manufacturer (OEM) to do the following: (1) List all

of its emission-related service and repair information on a Web site called FedWorld (including the cost of each item and where it could be purchased); (2) either provide enhanced information to equipment and tool companies or make its OEM-specific diagnostic tool available for purchase by aftermarket technicians, and (3) make reprogramming capability available to independent service and repair professionals if its franchised dealerships had such capability. These requirements were intended to ensure that aftermarket service and repair facilities have access to the same emission-related service information, in the same or similar manner, as that provided by vehicle manufacturers to their franchised dealerships.

In order to meet Congress' intent that consumers have freedom of choice in where to have their vehicles serviced, it is essential for independent technicians to have access to timely and accurate emission-related service and repair information. Industry estimates indicate that independent technicians perform up to 80% of all vehicle service and repairs. Further, independent technicians perform more repairs on older vehicles (which are more likely than newer vehicles to have higher emissions) than technicians in franchised dealerships. These conclusions are the result of statistics issued from the Motor and Equipment Manufacturers Association (Automotive Industry Status Report, 1999. EPA Air Docket A-2000-49, item II-F-05) that (1) the level of excess emissions increases as a vehicle's mileage increases, and (2) the percentage of non-dealer repairs increased and dealer repairs decreased as a vehicle's mileage increased and warranty coverage is no longer an issue.

In addition, OEM comments submitted during the comment period for the prior service information proposal (56 FR 48278, September 24, 1991) spoke to the integral role aftermarket technicians play in servicing the approximately 200 million vehicles in use. Many OEMs indicated that the number of service bays in their franchised dealerships are inadequate to service their fleets of vehicles and that

they depend on aftermarket technicians to provide service for their customers' vehicles, especially for those vehicles out of warranty. This further highlights the need for independent technicians to have access to timely and appropriate emission-related repair and service information.

Since 1995, the Agency has gained experience in the implementation of the service information requirements. Additionally, changing technology has made it necessary to revisit the current requirements to take advantage of advanced technology.

II. What Are the Details of This Proposal?

A. How Would Vehicle Manufacturers Disseminate Information Under This Proposed Rulemaking?

In the prior service information proposal (56 FR 48272, September 24, 1991), we proposed the dissemination of the required information by electronic format. However, after extensive comments from the automotive industry and our concerns at that time about the capability of the World Wide Web to handle the information and its limited use by the general public, we elected to use NTIS' FedWorld as the means of making information available. Rather than being a full text data base, the FedWorld data base is best characterized as a card catalog of required information, i.e., it lists the title, price, and purchasing instructions for each item.

As we have implemented the 1995 requirements, a variety of issues have been raised about the effectiveness of the information distribution requirements. First, several issues have been raised related to the effectiveness of FedWorld in making the required information available in an efficient and cost-effective manner. Input from both OEMs and aftermarket technicians indicates that it is often difficult to find specific items in the FedWorld data base. This is due to various factors, including the lack of common terminology among OEMs for the same or similar items and the failure of OEMs to provide descriptions of each item, e.g., documents are often listed by part number with no indication of what they contain. Additionally, EPA has been made aware that the information listed in FedWorld often was not available to be shipped from an OEM's designated distributor within one business day of an order being placed, as required by the regulations. OEMs have also complained about the administrative costs they were charged by NTIS and

the lack of technicians accessing the data base.

EPA agrees that there appears to be a limited number of technicians accessing the FedWorld database. We believe this is due to a variety of factors, including the following: (1) A lack of awareness about its existence; (2) the model years applicable to the information listed are just now coming out of the original manufacturer warranty; and (3) the inability to receive the information in a timely manner. Based on recent communications to the Agency, it appears that technicians are beginning to use FedWorld as the models contained in the database are appearing in larger numbers at aftermarket repair facilities. However, the database is still cumbersome to search and does not result in the information being provided in a timely manner. Finally, over the past year, several OEMs have sought the Agency's opinion as to whether they could opt-out of the FedWorld requirement if they made available the required information on their own Internet sites.

As a result of these requests and the issues cited above, we concluded that changes to the existing regulations are necessary to ensure that emission-related service and repair information is available in a timely manner to all persons who service and repair motor vehicles.

Therefore, today's rulemaking proposes that within 6 months of publication of the Final Rule, each OEM shall launch individual World Wide Web Internet sites and up-load on its Web site the full text of all emission-related service and repair documents,¹ in English, for all OBD equipped 1996 and later model year vehicles. We are aware that OEMs may be at different points in their Web site development. We are also aware that some OEM information for 1996 through 2000 model years may not be readily converted for use on the World Wide Web and the cost of doing so may be prohibitive. Therefore, EPA requests comment on the need for a short phase-in period for making available full-text service information as required in this proposal for 1996 through 2000 model year vehicles. Additionally, we are aware that service information for the 1994 and 1995 model years poses even greater technological challenges for conversion to full-text for use on the World Wide Web. For example, several

¹ This requirement does not apply to indirect information. 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 dealerships (or others).

OEMs have indicated to us that their service manuals and technical service bulletins for some of these model years are no longer available to them in electronic format. As a result, large volumes of information would need to be electronically scanned and converted for Web-based access. Therefore, we will propose alternative requirements for these two model years. For a discussion of service information requirements for 1994 and 1995 model years, please see section II(A)(2). OEMs will not be required to simultaneously maintain their indexes on the FedWorld database.

OEMs may choose to have a third party (e.g., FedWorld, an information intermediary, or another entity) establish and maintain their full-text Web sites. However, OEMs would remain responsible for ensuring accuracy and completeness of information as well as compliance with the regulations.

1. Required Information

In the original Service Information requirements finalized in August of 1995 (60 FR 40475), we required manufacturers to make available "any and all" information needed by the aftermarket to make use of the OBD system and such other information, including instructions for making emission-related repairs, excluding trade secrets. The 1995 regulations defined emission-related information as including, but not limited to, any 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. The existing regulations also require that information must be provided for any system, component or part that is likely to affect emissions, such as transmission systems.

Specifically, EPA required an index of emissions-related documents available for ordering to be up-loaded on the FedWorld database. The required information included, but was not limited to, manuals, technical service bulletins (TSBs), diagrams, charts, training materials (instructor manuals), and videos.

While we believe that the definition of "emissions-related" as described above is fairly comprehensive, we have received input from aftermarket technicians suggesting that there is additional information needed by the aftermarket to diagnose and complete emissions-related repairs that is not readily available across all

manufacturers. To address these concerns we are providing additional clarification and examples of the types of information that we believe is consistent with the statutory intent to provide "any and all" information needed to make use of the OBD system. These examples, which include pages from several OEM service manuals and a generic logic flow diagram for a repair procedure, can be found in EPA Air Docket A-2000-49 items II-F-02, and II-F-04. To the extent that manufacturers do not already make this information available to their dealerships, we are proposing that this information be developed for both their dealerships and aftermarket service providers. We also believe that the level of information being sought by the aftermarket and proposed in today's action is not proprietary and should therefore be included in the scope of the required information. This belief is based in part upon the increasing number of manufacturers who are voluntarily providing a wider scope of OBD information to aftermarket service providers without any expressed concerns to EPA regarding the release of proprietary information. To further ensure manufacturers that we do not intend to require proprietary information, we have provided specific examples of the increased level of information that is currently being made available by some manufacturers that we believe should be consistently required from all manufacturers to ensure the diagnosis and repair of OBD equipped vehicles.

We are proposing that manufacturers make available in full-text on their respective Web sites OBD system operational information which describes functional characteristics of the OBD system and emission-related components necessary to accurately diagnose and repair emissions-related problems. In particular, aftermarket and dealership service providers have indicated that OBD system operational information such as generic drive cycles, component operating ranges and system logic flow diagrams are valuable pieces of information needed for accurate diagnosis and repair of emissions-related problems. We also believe that this type of information will be needed for use in Inspection and Maintenance (I/M) programs. Currently some I/M programs have voluntarily incorporated checks of the OBD system into their programs. Additionally, within the next one to two years, EPA will require a check of the OBD system in Inspection and Maintenance programs. EPA has been working with

the voluntary I/M programs and they have expressed the need for information such as generic drive cycles to assist them in successfully implementing OBD checks into their programs.

As an example of the type of general OBD information that EPA believes is required to make emission-related repairs, and thus is proposing to require OEMs to make available, the most recent Advanced Engine Performance Specialist Test (L1) Preparation Guide developed by the organization Automotive Service Excellence (ASE) includes a reference booklet that has been placed in EPA Air Docket A-2000-49, item II-F-01. The ASE L1 Preparation Guide provides generic examples of various operating parameters for OBD components and sensors (e.g. a properly functioning engine coolant temperature sensor will show values ranging from -40°F to 248°F). This information is provided for those taking the test as an example of a diagnostic procedure a technician would utilize when servicing an emissions-related problem. We believe that the ASE L1 Preparation Guide is an effective example of the types of information we believe should be more readily available for all OEMs. To further analyze the availability of this level of service information, we conducted a literature search of a variety of service manuals from a cross-section of manufacturers. We looked at service manuals ranging from model years 1996-2000 for randomly chosen diagnostic trouble code PX300 (random misfire). A search of the service manuals was conducted to evaluate if information such as component operating ranges, logic flow diagrams, or generic drive cycles was available to assist technicians in trouble-shooting this particular code. Our research indicated that this type of information is not consistently made available by all manufacturers. Our analysis is contained in EPA Air Docket A-2000-49, item II-B-01, "Technical Memorandum from Shannon Elliot to Holly Pugliese and Arvon Mitcham, March 10, 2000".

We are aware of at least one manufacturer who makes this information available only via their manufacturer-specific diagnostic scan tool. For manufacturers who currently utilize this approach, we propose that this information also be included in full-text on their respective Web site(s). For manufacturers who make this information available in publications other than service manuals (e.g., training materials) that are not otherwise subject to the proposed full-text requirements, we propose that this

information be readily accessible in full text on manufacturer Web sites as well. For all manufacturers, this information should be formatted and appear in a clear, consistent, and readily accessible manner (e.g., tables or logic flow diagrams). Although the information should be as vehicle specific as possible, we understand that a manufacturer's system may be consistent across vehicle lines and, therefore, the information may be consolidated to make it as generic as is appropriate.

Additionally, vehicle systems are evolving in such a way that there is an increased likelihood of all vehicle systems, including the anti-theft system, affecting the electronic control unit (ECU). Therefore, we believe it is necessary and appropriate to ensure that information reflecting and affecting these inter-relationships is also provided to the aftermarket.

With today's action, we propose that the full-text documents to be up-loaded and available for viewing on OEM Web sites include, but not be limited to, the following items:

(a) Manuals, technical service bulletins (TSBs), diagrams, charts, training materials (see Section IIB for further detail) and videos.

(b) 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. OEMs are not required to provide algorithms, look-up tables, or any values associated with look-up tables.

In addition, it is proposed that OEMs provide emission-related diagnostic procedures on their respective Web sites and that access to these procedures not require connection to the vehicle to access this information.

(c) Documents such as component and subsystem manuals provided to OEMs or franchised dealerships by suppliers or other parties that have agreements with OEMs. We understand that OEMs are increasingly using third party contractors and suppliers to design and develop parts and other vehicle subsystems. We believe that this information is critical for the diagnosis and service of emissions-related problems and needs to be made available to aftermarket service providers. Thus, the fact that information is not provided directly by an OEM to its franchised dealerships should not preclude the OEM from making non-proprietary service and repair

information available to the aftermarket. EPA believes that it is appropriate for this information to be made available on OEM Web sites but also requests comment on alternative mechanisms for making this information available to the aftermarket.

(d) 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),

(e) 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).

(f) 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.

With regard to anti-theft systems, it appears that some OEMs have incorporated systems into their vehicles which, when the ECU is replaced or reprogrammed as part of an emissions-related repair, prevent the vehicles from being started without the use of an OEM-specific tool and codes. Additionally, some OEMs have incorporated anti-theft systems into their vehicles that disable the engine when the vehicle is brought in for service. In both of these instances, an aftermarket service provider would not be able to complete the repair for the customer without otherwise having to take the vehicle to a dealership to complete the repair. We believe that an emissions-related repair cannot be considered complete if the owner is not able to drive the vehicle away from the repair shop. Therefore, we are proposing that OEMs make this information directly available to the aftermarket.

EPA appreciates that vehicle manufacturers spend considerable resources to prevent vehicle theft and we do not want to jeopardize this security by allowing illegal disablement of the vehicle security system. Given the sensitive nature of the anti-theft system information, we believe it is reasonable to allow manufacturers some additional lead-time to incorporate additional appropriate security measures as needed

by each OEM. EPA requests comment on this issue.

Information for making emission-related repairs does not include information used to design and manufacture parts, but may include manufacturer changes to internal calibrations. However, a manufacturer need only provide such information to the extent it has provided such information to its dealerships.

Finally, we believe that manufacturers are accountable for the accuracy of their service information, for both their dealerships and the aftermarket repair industry. Moving toward Internet-based delivery of service information should increase the ability of OEMs to more quickly respond to errors in their service information and provide updates to the required information for all interested parties in a timely manner.

2. Pre-1996 Model Years

The primary focus of this proposal is on service information for vehicles equipped with complete OBD systems, i.e. 1996 and newer model year vehicles. However, we believe that it is important for aftermarket service providers to have access to service information for older models as well, particularly since the aftermarket services a majority of older vehicles. To address this need, EPA is proposing that OEMs either continue to maintain their databases of information on FedWorld or transfer information from FedWorld onto their Web sites and continue to make information available for sale as it currently is in FedWorld for 1994 and 1995 model year vehicles. Alternatively, OEMs could elect to provide full text information on their Web site for vehicles for model years 1994 and 1995.

3. Other Media

Currently, OEMs can choose to simultaneously provide information through a variety of media, such as print or CDs. However, EPA will not propose to require OEMs to maintain multi-media formats with this rule. Some manufacturers have expressed an interest in moving away from print and other media in the future and are concerned about having to maintain multiple media formats to meet the EPA requirements. We believe that it is reasonable for manufacturers who wish to do so to provide service information to the aftermarket via the Internet only and are not proposing to require manufacturers to make available information in multiple media formats.

However, we are also sensitive to the fact that a majority of repairs performed by the aftermarket are on older vehicles. Additionally, the useful lives of vehicles

continue to increase. Thus, aftermarket service providers need access to service information for a wide range of model years. In Section II(A)(5), we discuss our proposal that OEMs maintain the required information in full-text available on their Web 2001 model years to address this issue. We are requesting comment on this proposed length of time and are also requesting comment on the mechanisms that would be used by the aftermarket to obtain information that is no longer available in full-text format from OEM Web sites.

4. Small Volume Provisions

Because of the small U.S. sales volumes of some OEMs and the relatively small demand for the service information for these manufacturers, EPA believes it is appropriate to propose some flexibility for small volume manufacturers. It is proposed that OEMs with annual sales of less than five thousand vehicles be given 12 months after the effective date of the final rule to comply with the Web site requirements. We also propose that OEMs be exempt from the Internet requirements if they modify or manufacture less than one thousand vehicles annually, provided they present to the Administrator and obtain approval for an alternative method by which emission-related information can be obtained.

5. Timeliness and Maintenance of Information

We believe that for information to be effective, it must be provided in a timely manner. For aftermarket technicians this means having access to needed information when the vehicle is brought in for service. In the past, OEMs have argued that the aftermarket service industry seldom perform emission-related service during the first two or three years of ownership (during the 24,000 or 36,000 mile warranty period), and therefore don't need to have immediate access to new model service information. However, we believe that aftermarket service providers have, at least, a limited need for service information for new vehicles. Dealership service may not always be convenient for a customer and there are customers who prefer aftermarket service even though a vehicle is still under warranty. Further, EPA believes that it does not place undue burden on the OEMs to provide information that is already being made available to the dealerships. To ensure that aftermarket technicians have the required information when needed, we propose that OEMs upload the required information on their Web site within

three months of model introduction. After this three month period, we propose that the required information for each model be available and updated on the OEM Web site at the same time it is available by any means to their dealers.

EPA is also proposing that, beginning with the 1996 model year, manufacturers maintain the required information in full text for at least 15 years after model introduction. After this fifteen-year period, we propose that manufacturers can archive the required service information, but that it must be made available upon request, in a format of the manufacturer's choice (e.g., CD-ROM). We are proposing this requirement to account for the increasing useful life of vehicles and the fact that the aftermarket services a majority of older vehicles as discussed above. However, we also believe it is not necessary to over-burden OEM Web servers with service information that is still needed by the aftermarket, but not on as regular a basis as service information for newer models. Therefore, we believe it is appropriate to allow some flexibility for the distribution of service information for older vehicles. We request comment on the proposed length of time that manufacturers will be required to maintain full text information on their Web sites.

6. Accessibility and Performance Requirements

(a) Accessibility Requirements. We propose that each OEM Web site allow end-users to search its database of emission-related service information by various topics. These topics include, but are not limited to, model, model year, key words and phrases, diagnostic procedures, scheduled maintenance, and vehicle identification number (VIN). Additionally, we propose that manufacturers must provide information to allow for readily identifying the latest calibration. Further, while the VIN may be offered as one means of conducting a search, OEMs may not require the use of a VIN to initially access the data base. We further propose 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 propose that OEMs not limit the modem speed by which aftermarket service providers can access OEM Web sites. In other words, OEMs may not limit access to modem speeds of 28k or 56k. As more and more computer users invest in digital subscriber lines (DSL) and cable modems to access the Internet, we are concerned that limiting access at these relatively slower speeds will impact the ability to access information from OEM Web sites in a timely manner.

Feedback from aftermarket service providers has indicated that there are three primary ways to generally categorize the aftermarket. First, many aftermarket shops service a wide variety of makes, models, and model years and are likely to rely on consolidated information such as Mitchell or All Data and do not generally need access to manufacturer-specific information on a daily basis. There are also aftermarket shops who specialize by categories such as European or Asian makes and models. There are also shops that further specialize by a specific manufacturer. Additionally, other parties such as Inspection/Maintenance lanes and do-it-yourself mechanics may be interested in accessing OEM Web sites. Because of the potential for a wide variety of OEM Web site usage, we are proposing that manufacturers develop a three-tiered approach for the access to and cost structure of their Web-based service information to provide maximum flexibility and access to aftermarket service providers. We propose that these options include, but not be limited to short-term, mid-term, and long-term access to the required information.

(1) Short-Term Access. We propose that manufacturers provide short term access for a set price. Under this scenario, manufacturers 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. EPA believes that a reasonable fee for short term access can be as little as \$0, but should be no greater than \$20.

(2) Mid-term Access. We are proposing 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.

(3) Long-term Access. We are proposing 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.

We believe that establishing this tiered approach will serve as a reference point for manufacturers to develop and implement access to their Web sites that allow maximum flexibility for aftermarket service providers, and others who engage in the service and diagnosis of vehicles given the varying needs for access to manufacturer specific information. Additionally, EPA is significantly concerned that some OEMs will develop pricing structures for access to their sites in such a way that will prevent the purchase of information. Because of this concern and to help reduce the possibility that inappropriate pricing will occur, we believe that it is appropriate for EPA to establish specific pricing parameters that each manufacturer must follow when determining access fees for the three tiers described above. In determining the pricing parameters described above, we took into consideration feedback we have received thus far from some aftermarket service providers on what they believe the appropriate pricing parameters are for each of the three tiers. We also took into consideration other factors such as the current cost to the aftermarket for purchasing information from OEMs and the potential costs to OEMs for developing, implementing, and maintaining OEM Web sites. We have not received specific feedback from a majority of manufacturers on their intended pricing structures, mainly due to the fact that most manufacturers are still in the development stages of their sites and are not in a position to comment on the issue at this time. We understand that the cost of service information is a significant issue for both the OEMs and aftermarket service providers. To this extent, we request comment on this proposed tiered structure, the pricing parameters established by EPA for each of the tiers, and what other factors should be considered by EPA when evaluating whether manufacturers are making their information available via the Internet at

a reasonable cost. For a more complete discussion of cost for all of the provisions contained in today's proposal, see Section II(F).

(b) Performance Requirements. The availability of service information also relies heavily on the ability of OEM Web sites to perform in such a way that service information can be delivered via the Internet to potentially thousands of users at any given time without significant delay. This is particularly important given the complexity of the service information being transmitted (e.g., wiring diagrams, electrical circuit diagrams, etc.). The transmission of information via the Internet depends on a complex array of server, database, network, and other Web-based infrastructures that impact a Web site's ability to transmit at maximum efficiency. While manufacturers cannot be held accountable for issues such as end-user hardware and software or the type of connectivity utilized by the end-user, (e.g., standard modem, cable modem, or digital subscriber line), we believe it is necessary for manufacturers to measure the parameters that are within their control.

To this end, we are proposing 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 6 months after the final rule is issued), or upon request by the Administrator. The parameters to be measured include, but are not limited to, the following:

(1) 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.

(2) Average successful requests per day (measured in number of files). This is defined as reports of the average successful requests per day of all files which have been requested, including pages, graphics, etc.

(3) Total successful requests for pages [report on number of pages (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 requests counts all the documents that were returned or where the document

was requested but was not needed because it had not been recently modified and the user could use a cached copy.

(4) 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 requests because they could not be found or were read-protected. This includes pages, graphics, etc.

(5) Total redirected requests (measured in number of files). This is defined as redirected requests that indicate that the user was directed to a different file instead.

(6) Number of distinct files requested (measured in number of files). This is defined as the number of different file types that were requested (i.e., html, pdf, txt).

(7) Number of distinct hosts served (measured in number of files). This is defined as reports on the number of different computers where requests have come from.

(8) Corrupt logfile lines (measured in number of lines). This is defined as the lines in the logfile that were unreadable by the computer.

(9) Total data transferred (measured in bytes). This is defined as the total amount of data transferred from one place to another.

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

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

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

(13) Hourly Summary (measured in number of files/pages by hour of day). This is defined as the total number of requests for each hour of the day, over a specific time period.

(14) Request Report (measured in number of files/pages by individual URL). This is defined as which files were downloaded.

(15) Referrer Report (measured in number of files/pages by individual referring URL). This is defined as which pages linked to your files.

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

(17) Browser Report (measured in number of files/pages by browser type,

i.e., Mozilla 4.0). This is defined as a list of the detailed versions of browsers used.

This list will be periodically reviewed by the Administrator to address changes in technology and any potential compliance issues.

Manufacturers would have the option of conducting their own performance measurements or contracting with companies who specialize in Internet performance measurement (e.g. Keynote Systems, Inc.). However, we intend to work with OEMs to develop a standard format that all manufacturers would use to submit the required information to the Administrator and issue the required format via a manufacturer guidance letter.

We believe that manufacturers are likely to evaluate at least some aspects of the performance of their Web sites regardless of any requirement do so. As a result, we believe that this requirement places minimal burden on OEMs to meet the proposed requirements for performance evaluation. The proposed requirements to assess Web site performance serve to outline a consistent level of information to be provided to the Administrator to assist in evaluating compliance with Internet-based access to service information.

7. Hyperlinking

To facilitate the search for emission-related information on the Internet, we propose 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. For example, an association such as the Service Technician's Society (STS) may want to have a section of their Web site that will allow an aftermarket technician to access a complete listing of all the OEM Service Information Web sites. Hyperlinking will allow individuals to connect directly to the OEM Web home page of their choice directly from the STS Web site.

8. Administrator Access to OEM Web Sites

The Administrator shall have access to each OEM Web site at no charge to the Agency. The Administrator shall have access to the site, reports, records and other information as provided by sections 114 and 208 of the Clean Air Act and other provisions of law.

B. What Provisions Are Proposed for Service Information for Third Party Information Providers?

Currently, many aftermarket service and repair facilities depend on consolidated service information purchased from third party providers such as Mitchell and All-Data. These companies primarily consolidate and repackage OEM service manuals and technical service bulletins (TSBs) for purchase by the aftermarket. Currently, OEMs often provide their service manuals and TSBs to these third parties in hardcopy. Given the trend in the electronic exchange of information, we believe that it is reasonable for OEMs to provide information electronically to third party providers. While we are proposing to require that OEMs provide full-text access to their information via the Internet for aftermarket service providers and that this is the same information needed by third party information intermediaries, we do not believe that it is a practical option for these third party information providers to download this information directly from the OEM Web sites. There are numerous manufacturers with tens of thousands of pages of service information. For third parties to access service information directly from the each OEM Web site could result in unreasonably long Internet connectivity times for third party service providers. More importantly, we are concerned that third party access directly from the OEM Web sites could impact the overall performance of those sites given the large volumes of information that would be accessed by third party information providers. We believe that this could impede the ability of aftermarket service providers to access the relatively smaller bits of information they need to diagnose and repair vehicles. Finally, manufacturers will already have developed this information in electronic format for uploading onto their individual Web sites and we are not proposing to require manufacturers to develop special formats to meet this proposed requirement. Because of these factors, we believe it does not place undue burden on OEMs to provide the information required by this regulation in electronic formats directly to third party service information providers, rather than utilizing individual OEM Web sites to access the required information. To this end, we propose that OEMs provide information directly to third party information intermediaries with all emission-related information in electronic format in English that utilizes nonproprietary software. In the alternate, OEMs may

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, it is 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 propose 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.

We propose this requirement because, in spite of recent trends of moving toward electronic access to information, we believe that there is likely to be a market for third party service information providers, particularly for aftermarket service providers who service numerous makes, models, and model years. This proposed requirement does not apply to the 1996 through 2001 model years because service information for these model years has already been supplied by manufacturers to third party service providers.

C. What Requirements Are Proposed for the Availability of Training Information?

In our 1995 Final Rule on Service Information, manufacturers were required to make available to the aftermarket "any and all" information needed to make use of the OBD system, including any instructions, for emission-related repairs. All training materials (including notices of OEM sponsored classroom training) were also to be made available for purchase from FedWorld at the same time this information was made available to dealerships. OEMs supported a provision that would require them to make available the training material they provided to their dealerships, but indicated they could not offer classroom training to the aftermarket because of limited classroom space and other resource limitations. Likewise, the aftermarket indicated that sending their technicians to offsite training would also be very resource intensive in terms of training cost, loss of technician work time, and potential loss of business. EPA agreed that it would be overly burdensome to require manufacturers to open their classrooms and instead finalized provisions that required the availability of training information through the medium of their choice (e.g.

printed manuals, videotapes, CDs, etc.) and made available for purchase from FedWorld.

Since that time, EPA has been in discussions with the aftermarket indicate that complex OBD technology requires an even greater access to OEM-specific training than is available to the aftermarket today. A recent survey conducted by the Service Technicians Society, (EPA Air-2000-49, item II-F-03) indicates that one of the greatest concerns of the aftermarket remains the availability of OEM-specific training and repair information. Aftermarket service providers generally believe that OEM-specific training provides a more comprehensive level of critical information that is necessary to perform some of the most complex emission-related repairs as compared to some of the generic training that is currently available to the aftermarket.

Additionally, we have become aware that several of the larger manufacturers are revising the mechanisms used to deliver training to their franchised dealerships. In particular, some manufacturers are moving toward consolidating their training facilities and beginning to offer training courses to the dealerships via satellite and the World Wide Web. Computer and satellite technologies are also becoming more accessible and affordable for aftermarket service providers and the general public. We believe that these trends, which are likely to continue, provide an opportunity for aftermarket technicians to have access to OEM-specific training that may be delivered via the Internet and satellite without placing burden on OEMs to provide training directly to the aftermarket. In other words, we believe that technology is evolving in such a way that will allow aftermarket shops to receive OEM training directly from Internet sources or via satellite downlinks right on their own personal computers and/or from satellite transmissions.

In today's action, we propose to expand the training information availability requirements to include any training courses offered by OEMs to their franchised dealerships via satellite, Internet, Extranet, or other means that contain, in whole or part, emission-related information. To achieve this, we are proposing two provisions: (1) availability of OEM training material for purchase from OEM Web sites, and (2) availability of OEM Internet and satellite training materials for third party re-packaging and re-distribution.

1. OEM Training Material for Purchase on OEM Web Sites

We are proposing 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 are proposing 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. It is 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 as described in Section II(F). We also request comment on a provision that would require OEMs to tape the emissions-related class room training provided to dealerships and making those tapes available for sale on OEM Web sites.

We propose that these requirements apply for 1996 and later model year vehicles starting 6 months following the effective date of the Final Rule. For subsequent model years, it is 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.

2. Third Party Access to OEM Training Material

OEMs have expressed that the current state of Internet and satellite technologies and aftermarket demand for direct access via satellite or the Internet do not support a need for providing direct access of these training courses to the aftermarket in these formats. We recognize that there is some uncertainty with the technology as it exists today, but we believe, contrary to arguments made by OEMs, that computer hardware and software technology is evolving in such a way that advanced technologies such as cable modems, digital subscriber lines (DSL) and streaming video will become increasingly prevalent and affordable within the next 2-5 years. Additionally, the equipment needed to access satellite transmissions is also becoming increasingly affordable. We believe it is realistic that access to training for the aftermarket and other information directly on the Internet or via satellite is an attainable goal and will go a long way to meeting some of the concerns of the aftermarket on their ability to

acquire training, OEM or otherwise. OEMs have also argued that it is unreasonable that OEMs be burdened with providing training directly to aftermarket service providers. While we recognize that advances in Internet and satellite technology will reduce some of the administrative issues that OEMs would face in delivering training to the aftermarket, it may still be a burden for OEMs themselves to deliver automotive training courses (e.g., Chrysler's OBDII Student Workbook and General Motors' OBDII manuals) to the aftermarket. Therefore, we are also proposing 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. 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 arranged fee based on a per-use or enrollment/subscription basis.

While we are not requiring third party training entities to deliver training to the aftermarket in any format, there is a large market of third party training providers who currently provide both generic and some OEM-specific training to the automotive aftermarket in a variety of formats including training manuals, CDs and class room training. We are also specifically aware of several training providers who have developed, or in are in the process of developing, Web-based training programs for aftermarket service providers. To this end, we believe that requiring direct access to OEM Internet and satellite transmissions for third party training providers is simply expanding upon the training delivery mechanisms that can be utilized to deliver training to the aftermarket. To the extent that OEMs expand their usage of the Internet and/or satellite technology to deliver OEM-specific training to their franchised dealerships, we believe this proposed provision will increase the availability of OEM-specific training to aftermarket service providers.

EPA proposes that this requirement be effective for 1996 and later model year vehicles starting 6 months following the effective date of the Final Rule.

D. What Requirements Are Proposed for Reprogramming?

Under the existing service information regulations, if their franchised dealerships have the ability

to reprogram the electronic control unit (ECU), OEMs are required to provide reprogramming capability to the aftermarket. The existing regulations allow OEMs to meet this requirement by providing information to equipment and tool companies that allows them to incorporate reprogramming into their tools or by making available to the aftermarket the manufacturer-specific reprogramming system or tool that performs reprogramming events. All but one manufacturer has satisfied this requirement through the latter option.

As a result, aftermarket shops that want to provide reprogramming services to their customers and that service multiple makes of vehicles have been faced with costly and time consuming barriers to performing reprogramming services for their customers. Because manufacturers have opted to meet the current requirement by making their OEM-specific reprogramming tools available for sale, an aftermarket service provider who wishes to perform reprogramming events has to purchase a different reprogramming tool or system for each vehicle manufacturer. This has imposed significant costs on aftermarket shops. Several manufacturers incorporate reprogramming capabilities into their manufacturer specific diagnostic scan tool. An aftermarket technician who otherwise uses a generic diagnostic scan tool, which ranges in cost from approximately \$300 to \$3000, to perform most diagnoses and repair would need to purchase multiple manufacturer-specific diagnostic scan tools or systems, which generally range in cost from \$1600 to several thousand dollars each, not including the cost of purchasing the re-calibration or reprogramming event itself or the software and software updates needed to use the diagnostic scan tool. For example, an aftermarket shop who wanted to perform reprogramming events just for Ford, GM and Chrysler would have to purchase 3 separate OEM-specific diagnostic tools that would cost a total of approximately \$6000 to \$10,000. Additionally, EPA is aware of at least three larger manufacturers who intend to move toward reprogrammable OBD computers within the next few model years. This trend underscores the need to work with manufacturers and aftermarket scan tool companies to develop cost effective reprogramming alternatives for aftermarket repair facilities. As a point of comparison, we estimate that diagnostic scan tools capable of reprogramming multiple makes and models will cost approximately \$1500 to \$2500.

Aftermarket shops who want to perform this advanced diagnostic

service for their customers short of investing in multiple manufacturer-specific diagnostic scan tools must then rely on a dealership to perform this service. This option can impose significant burden on aftermarket service providers and consumers in several ways. First, the service provider must purchase the service from the dealership with dealer mark-up, which could result in potentially higher cost for the consumer who chooses to have service performed by aftermarket shops. Second, having to bring a vehicle in need of a reprogramming event to a dealership can add significant additional time needed to complete an emissions-related repair. There is no guarantee that the dealership will be willing to perform this service for the aftermarket in a timely fashion and we have received complaints from aftermarket service providers indicating that they have had to wait days, or even weeks, to have reprogramming service provided by a dealership. We believe that these factors place the aftermarket in a non-competitive position in the marketplace for performing reprogramming services, which ultimately impacts a consumer's freedom of choice for who services their vehicle.

At the time the 1995 regulations were being developed, OEMs expressed concern that making reprogramming capabilities widely available to the aftermarket would result in a significant increase in tampering or misuse of calibrations and re-calibrations. Though neither EPA nor the OEMs could substantiate how much of a problem this would be, we believed a cautious approach regarding misuse of this new technology was appropriate at that time. We therefore finalized a provision that allowed manufacturers the options described above.

Since that time, neither EPA nor the manufacturers have been made aware of significant instances of the misuse of the information needed to develop aftermarket scan tools with reprogramming capabilities, or misuse of the actual calibrations or re-calibrations themselves. We are also not aware of any confidentiality issues encountered by the one manufacturer who makes their information available to the aftermarket scan tool company that develops their aftermarket reprogramming tool. Further, we are not aware of any confidentiality issues regarding the information that manufacturers do provide to aftermarket scan tool companies to develop generic aftermarket diagnostic tools. We are aware that individual manufacturers currently have confidentiality

agreements in place with individual aftermarket scan tool companies to protect any information provided to scan tool companies by OEMs and that information can be labeled as confidential business information by the OEM. Under these confidentiality agreements, OEMs have recourse to revoke or pursue other legal remedies for violations of these agreements. We are not aware of any such instances and believe that requirements proposed today will not impact the ability of OEMs to retain control of any information they label as confidential. Additionally, none of the information required by aftermarket scan tool companies to incorporate reprogramming capabilities into aftermarket scan tools reveals calibration or re-calibration specifications. Finally, technology known as pass-through reprogramming has evolved in such a way that allow for increased protection of calibrations and re-calibrations that the OEMs make available for the completion of reprogramming events. The manufacturer calibration software remains resident and accessible through the manufacturers Web site as opposed to the current CD-ROM distribution to the aftermarket. This allows the OEM more control of distribution and better tracking of distribution. In addition, the pass-through device does not have hardware interface or additional ports for software re-direction similar to an OEM or aftermarket scan tool which are currently used to transfer data between the PC and the vehicle ECU. An aftermarket diagnostic scan tool with pass-through reprogramming capability that can reprogram multiple manufacturers is expected to cost approximately \$1500–\$2500.

Taking into consideration all of these factors, we believe that it is necessary to propose changes for access to reprogramming capabilities in this proposed rulemaking. In order to make reprogramming capabilities available to the aftermarket for the broadest range of model years possible, we are proposing a two-tiered approach. First, for MY1994 through MY2002 OBD equipped vehicles with reprogramming capability, we are proposing that manufacturers 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. This would include the following information necessary for programming the Electronic Control Unit (ECU):

(a) the physical hardware requirements including communication network specifications for reprogramming events or tools (e.g., system voltage requirements, cable terminals/pins, connections such as RS232 or USB, wires, etc.),

(b) ECU data communication including message format and data encoding (e.g., serial data protocols, transmission speed or baud rate, bit timing requirements, etc.),

(c) information on the application physical interface (API) or layers (descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination),

(d) vehicle application information or any other related service information (which interfaces or combination of interfaces are used on each vehicle system for each make/model year) such as special pins and voltages for reprogramming events or additional vehicle connectors that require enablement and specifications for the enablement. This is not a new information requirement for the vehicle manufacturers. This is the same information that is currently used to produce the same diagnostic functionality in dealership scan tool equipment. See EPA Air Docket #A-2000-49, item II-F-06 for complete New Product Information Guidelines (NPIG) developed by the Equipment and Tool Institute.

We believe that the information being proposed does not require manufacturers to make any hardware or software changes. Rather, manufacturers must only make the information available to aftermarket tool and equipment companies. We are proposing that this information be made available within 6 months of publication of the Final Rule. After that, this information shall be released when it is first provided to franchised dealerships.

Second, for MY2003 and later OBD equipped vehicles with reprogramming capabilities, we are proposing that manufacturers comply with SAE Standardized Practice J2534 for "pass-through reprogramming." Pass-through reprogramming is a process that allows the programming or reprogramming of a vehicle's computer without revealing proprietary information to the end user. EPA has seen multiple demonstrations of this technology and is aware that several large manufacturers use this process for dealership reprogramming. In light of the success of pass-through reprogramming and the cost burden associated with the purchase of multiple tools under the existing regulations, we

believe that the aftermarket should not be required to use OEM-specific tools for emission-related reprogramming. Additionally, SAE J2534 was developed with extensive cooperation between the OEMs and aftermarket tool and equipment companies. We believe that this standardized practice addresses a vast majority of the technological issues raised by both parties and will ultimately provide a cost-effective means for aftermarket reprogramming while still protecting the proprietary information of the OEMs. This SAE Standard Practice is proposed to be Incorporated by Reference in Section II(G). SAE J2534 is currently undergoing final review and approval. A draft of J2534 is available for inspection in EPA Air Docket A-2000-49. While it has not been finalized in time for this proposal, we believe it will be finalized in time for the final rule. Upon final approval of this standard, EPA will issue a notice of document availability at which time the finalized version will be placed in EPA Air Docket A-2000-49 for inspection. The final version of J2534 will also be available directly from the Society of Automotive Engineers (SAE).

We are aware that some manufacturers use manufacturer specific diagnostic link connectors for reprogramming that are placed in locations other than those which are currently required by SAE Standard Practice J1962. To standardize reprogramming capability for the aftermarket, we also propose that manufacturers must comply with SAE Standard Practice J1962, "Diagnostic Link Connector" for the purposes of pass-through reprogramming, beginning with the 2003 model year. J1962 has already been approved for Incorporation by Reference in EPA's On-Board Diagnostic regulations (58 FR 9468). EPA requests comment on the lead-time necessary for manufacturers to comply with this proposed requirement.

We also propose 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 WIN-32 operating system. In other words, EPA expects that manufacturers will not simply bundle the pass-through reprogramming software with other OEM software, repackage this OEM-specific software as an aftermarket version and charge a price that is not reasonable for the aftermarket.

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

E. What Requirements Are Proposed for the Availability of Enhanced Information for Scan Tools and OEM-Specific Diagnostic Scan Tools?

The service information regulation published August 9, 1995 (60 FR 40474) required OEMs to make certain generic service information available to tool manufacturers. Enhanced service information was also required to be made available. However, OEMs had the option of either making their OEM enhanced diagnostic tools available for sale to independent technicians at a reasonable cost or making available to aftermarket tool and equipment companies the information needed to develop and manufacture enhanced aftermarket diagnostic tools. This requirement did not achieve the CAA directive to make available all information needed to make use of the emission control diagnostic system to any person engaged in repairing or servicing of motor vehicles or motor vehicle engines for several reasons.

First, because many manufacturers opted not to provide enhanced information to the equipment and tool companies, the aftermarket tools that are manufactured and sold often do not provide the comprehensive information needed by aftermarket technicians to perform more advanced emissions-related repairs. We believe that aftermarket shops who service numerous makes and models are placed at a competitive disadvantage regarding the level of service they can provide for their customers. Second, aftermarket service providers who wish to perform more advanced diagnoses and repairs must purchase an enhanced diagnostic tool for the majority of OEMs in order to be able to perform advanced OBD diagnoses. OEM-specific diagnostic scan tools range in cost from \$1600 to approximately \$5000. We are also aware of at least one OEM who makes their OEM-specific diagnostic tool available

for sale for approximately \$20,000. With the average cost of approximately \$3000, aftermarket shops who want to be reasonably equipped to provide advanced diagnostic and repair services for the 6 or 7 largest manufacturers would have to invest tens of thousands of dollars in diagnostic equipment on top of the several thousands of dollars per year that aftermarket shops must invest each year for service information. On the other hand, OEM dealerships generally serve just one manufacturer and can make relatively smaller investments in tools and equipment. We believe that this is cost prohibitive and creates a substantial competitive disadvantage for independent shops who generally run much smaller businesses than OEM dealerships. We also believe that the large investments that need to be made in OEM-specific tools prevents independent shops from performing services that dealers are able to perform, placing them at a competitive disadvantage in the level of services they can provide, ultimately making it difficult for some aftermarket service providers to even stay in business.

Ultimately, we believe that the option most manufacturers have chosen under the existing requirements results in customers being denied freedom to choose where to have their vehicles serviced. To eliminate these inequities and to ensure that all aftermarket service providers have access to the diagnostic tools essential for the diagnosis and repair of OBD systems, we propose two requirements. First, we propose that manufacturers provide generic and enhanced information as described below to aftermarket tool and equipment companies to develop aftermarket diagnostic scan tools. Second, we propose that OEMs make available for sale their manufacturer-specific diagnostic scan tools at a fair and reasonable price.

(1) *Description of Enhanced Diagnostic Information.* We propose 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 propose 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 information is defined as information that is necessary to implement an on-

board diagnostic service interface. In general it encompasses information that describes each of the various diagnostic communication interfaces

(communication protocol, message, timing and any information which identifies which interface is applicable to each particular my/model/engine combination). This information must cover both generic and enhanced information. 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;

In addition, we propose that manufacturers 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) to meet this requirement or provide a substitute matrix approved by the Administrator. The NPIG is a standard format already used by a majority of manufacturers when submitting information to ETI. An example of the NPIG is available in EPA Air Docket A-

2000-49, item II-F-06. OEMs are not required to release the underlying computer codes that make up calibrations and recalibrations.

(2) Distribution of Enhanced Diagnostic Information. Currently, all but one of the manufacturers who make available scan tool information use the Equipment and Tool Institute (ETI) as the primary distribution mechanism for scan tool information. In particular, ETI maintains the "TEK-NET Library", which is administered through a secure Web site that ETI has developed to gather and re-distribute diagnostic scan tool information to its member companies as agreed through licensing and other contractual arrangements. This arrangement has been developed independently between the OEMs, ETI, and ETI member companies (e.g. Snap-On, SPX, etc) and has been in use for several years. However, since the 1995 regulations were finalized, we have become aware of several instances where manufacturers have submitted the information required by the regulations to ETI and/or their member companies in either unmanageable formats (e.g. reams of paper) or in languages other than English. These inconsistencies can affect the ability of aftermarket scan tool companies to provide timely updates and/or introduce new products to aftermarket service providers. Because aftermarket service providers rely heavily on the diagnostic scan tools they purchase from ETI member companies to diagnose and repair emissions-related problems, we believe it is imperative that the required information be provided to ETI and/or their member companies in a timely and manageable manner. Therefore, we propose 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 propose 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. At this time, we believe that ETI's TEK-NET library meets the intent of this proposed requirement and we encourage manufacturers to continue the on-going, cooperative relationship. We also propose 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 aftermarket 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.

(3) Availability of Manufacturer-Specific Diagnostic Scan Tools.

The current regulations give manufacturers the option of either making information available to aftermarket diagnostic tool companies so that they can develop generic aftermarket diagnostic scan tools or making available for sale their OEM-specific diagnostic scan tools. As discussed above, a majority of manufacturers already make their OEM-specific tools available for sale rather than making available information available for the development of generic aftermarket tools. While we are proposing to require that all OEMs provide an increased level of information for the development of more sophisticated generic aftermarket scan tools, we believe there will continue to be a demand for OEM-specific tools as well. For example, we are aware that many aftermarket shops specialize in European or Asian models or exclusively in one manufacturer such as BMW or Mercedes-Benz. These aftermarket shops are likely to make the investment in manufacturer-specific diagnostic tools even though they are priced higher than generic diagnostic tools in order to provide more specialized services for their customers. In order to ensure that OEM-specific tools continue to be available to aftermarket service providers, we propose that vehicle manufacturers make available for sale their own manufacturer-specific diagnostic tools. OEMs may elect to develop different versions of one or more of their diagnostic tools, but emission-related service information must be made available to the aftermarket. In addition to making their diagnostic tools available for sale, OEMs must provide support for those tools or have a third party do so. If a third party does so, the OEM is responsible for availability and accuracy. We propose 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.

(4) Decontenting of OEM-specific Tools. Some OEM-specific diagnostic tools contain information that is not emission-related. If OEMs decide to delete the non-emission related information ("decontent") from the tool before offering it for sale to the aftermarket, we expect that the cost of the tool will be adjusted to reflect its decreased value. It is proposed that the emission-related information in the tool be identical to that contained in the tool offered to the dealers. In such cases, it is 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.

(5) Availability of Special Tools. Some manufacturers currently require the use of a special tool to extinguish the MIL. It is our understanding that these tools are not always available to the aftermarket. To address this issue, EPA is proposing that OEMs be precluded from using such systems beginning with model year 2002. For model years 1994–2001, today's rulemaking proposes 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 is proposed that this information be made available no later than 3 months following the effective date of the Final Rule.

F. What Are the Cost Provisions Proposed for Service Information?

As discussed in the 1995 Service Information regulations, we believe that cost is an integral factor influencing the availability of service information. At that time, we were concerned that manufacturers could have priced their service information and OEM-specific diagnostic scan tools in such a way that would preclude their purchase and subsequent use, therefore rendering the information and/or tools unavailable. While we believe that a majority of manufacturers have made a good faith attempt to meet the "reasonable cost" provisions finalized in 1995, we believe it is necessary to revisit the issue of cost of service information and diagnostic scan tools and the Agency's position on this issue. Additionally, full-text access to information via the Internet introduces additional parameters that must be evaluated in order to ensure that the information required by these regulations can be considered available. As a result, we are proposing revisions to the regulations governing "reasonable

cost" to reflect the proposed move from FedWorld to the World Wide Web.

The 1995 regulations establish parameters for OEMs on what factors should be considered by manufacturers when developing the pricing structures for the required information. We also received substantive comments from OEMs and aftermarket service providers on what those factors should be and incorporated many of them into the 1995 final rule. As a result, we required manufacturers to make emission-related service information available at a reasonable cost. Reasonable cost was described as a fair and reasonable price taking into consideration factors such as the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g. the size of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to finalization of the 1995 rule, volume discounts and inflation. One of the factors that was finalized as a reference point for evaluating the cost of service information allows OEMs to recover the costs incurred for preparing and/or providing the information. Since manufacturers will be moving to the World Wide Web as a primary means of distribution for their information, we propose that one of the factors to be considered in determining whether the price charged for the access to the information on the World Wide Web is reasonable is the cost incurred by OEMs for developing their Web sites. Section II(6)(a) also discusses some of the feedback we have received from the aftermarket on what some aftermarket service providers consider as reasonable costs for access to information on OEM Web sites. We solicit comment on the general pricing structure as it is discussed in this section.

While we have discussed some specific aspects of the cost of service information for Web access to the required information, we expect that all of the information and diagnostic scan tools covered by this proposal to be made available at a reasonable cost in such a manner that ensures its availability. Manufacturers who develop pricing structures for the required information in a manner that renders it unavailable to the aftermarket will be considered in violation of the regulations and subject to fines of \$25,000 per day per violation.

G. Which Reference Materials Are Proposed for Incorporation by Reference?

Also being proposed is 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 due to a variety of issues on the standardization of the electronic format of service information. It is proposed that manufacturers comply with J1930 beginning with the 2003 model year. EPA believes that most manufacturers have already adopted J1930 in the development of their service information. However, the Agency believes that it is important for all manufacturers to adopt J1930 definitions and terminology given the increasing complexity and volume of service information. Therefore, the Agency is proposing to require that all manufacturers comply with J1930 beginning with the 2003 model year.

Today's action also proposes the incorporation of SAE Recommended Practice J2284, "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. It is proposed that manufacturers comply with J2284 beginning with the 2003 model year. EPA also believes that most manufacturers are moving toward the adoption of J2284 with model year 2003 and that there will be little objection from the manufacturers on this requirement.

As discussed above in section II(D), we are also proposing to incorporate by Reference SAE Recommended Practice J2534 and SAE Recommended Practice J1962. All of these items with the exception of J2534 are available for inspection in EPA Air Docket A-2000-49. SAE J2534 will be made available for inspection in the docket once it has been finalized. A draft of SAE J2534 has been placed in EPA Air Docket A-2000-49 for inspection. All SAE recommended practices can be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, or at www.sae.org.

H. What Are the Proposed Requirements for Heavy-duty Service Information?

Section 202(m)(5) of the Clean Air Act applies service information availability requirements to all motor vehicles equipped with emission-control diagnostic systems, including heavy-duty vehicles and engines. We are proposing that all of the requirements proposed today apply to manufacturers of all heavy-duty vehicles and engines weighing 14,000 pounds gross vehicle weight (GVW) and lower beginning in model year 2005, which is the first year that such engines and vehicles are subject to OBD requirements. Today's proposal applies only to engines and vehicles subject to the OBD requirements during the phase-in of those requirements. EPA is proposing the same requirements for these engines and vehicles as it is proposing for light-duty vehicles and trucks. However, we recognize that certain aspects of these proposed regulations may need to be reviewed to ensure that they accurately reflect how the aftermarket service industry can be best assured of receiving the information necessary to make use of the OBD system and to make emissions-related diagnosis and repairs. We request comment on the appropriateness of the proposed requirements for this sector.

I. Are Formats for Service Information Proposed?

The Agency is not proposing any requirements that specify the format that manufacturers must use to organize or display the required information on their Web sites. In particular, we are not requiring manufacturers to comply with SAE Standardized Practice J2008 "Recommended Organization of Service Information". In the August 1995 final rule, the Agency could not finalize the incorporation of J2008 because the standard had not yet been finalized. At that time, the Agency was optimistic that J2008 would be finalized in time to allow manufacturers to adopt it voluntarily or give EPA the option of incorporating it into the service information requirements. However, J2008 was not finalized until October of 1998. By that time, several large OEMs were well into the development of their Web sites and some manufacturers were already conducting pilots within their dealerships. While the Agency is supportive of providing information in formats that are user-friendly and readily accessible to the end-user, we are reluctant to implement requirements that would require manufacturers to redesign existing service information that has already been developed. The

Agency has put forth minimum performance requirements that we believe will allow us to monitor manufacturer Web site performance while allowing manufacturers maximum flexibility and creativity in the development of their service information for access on the Internet. Finally, we believe that the learning curve for aftermarket service industry will level off relatively quickly given the ever increasing dependence on computers and the Internet to conduct business. EPA requests comment on the need for J2008 or another format for service information.

III. What Is the Cost of This Proposal?

This proposed rulemaking alters existing provisions by revising the current service information regulations. The provisions proposed in today's rulemaking require OEMs to make available information and tools that have already been developed for use by their dealerships. Therefore, EPA believes that the changes proposed today put little or no new additional requirements on OEMs beyond administrative costs for providing access to existing information and tools, which are recoverable to the OEM as discussed above in IIF.

IV. What Are the Opportunities for Public Participation?

A. Comments and the Public Docket

EPA welcomes comments on all aspects of this proposed rulemaking. Commenters are especially encouraged to give suggestions for changing any aspects of the proposal. All comments, with the exception of proprietary information should be addressed to the EPA Air Docket Section, Docket No. A-2000-49 (see **ADDRESSES**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by 1) labeling proprietary information "Confidential Business Information" and 2) sending proprietary information directly to the contact person listed (see **FURTHER INFORMATION CONTACT**) and not to the public docket. This will help insure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission labeled as confidential business information as part of the basis for the final rule, then a nonconfidential version of the document, which summarizes the key data or information, should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the

procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, the submission may be made available to the public without notifying the commenters.

B. Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing (see **DATES**) should, if possible, notify the contact person (see **FOR FURTHER INFORMATION CONTACT**) at least seven days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advanced copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advanced copies should be submitted to the contact person listed.

The official records of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the Air Docket Section, Docket No. A-2000-49 (see **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket for review. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

V. What Are the Administrative Requirements for This Proposal?

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines

a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601–612, generally requires federal agencies to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because the regulated entities impacted by this rulemaking would not be considered small entities.

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 0783.41) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>.

EPA is proposing that manufacturers subject to the proposed requirements for Web based delivery of service information be required to submit to the Administrator on an annual basis an electronic report that contains measurements of the various performance parameters as outlined in Section II(A)(6) of this preamble. The information proposed to be collected will allow the Agency to assess compliance with the regulations.

It is estimated that the cost of collecting this information will be \$250 per month, or \$3000 per year for each of the approximately 45 manufacturers subject to this proposed information collection requirements. Initial start-up costs are expected to be approximately \$1000 with approximately \$100–\$200 per year for maintenance. The 400 burden hours are estimated to cost \$11,628.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR

between 30 and 60 days after June 8, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by July 9, 2001. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgation an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA believes this proposed rule contains no federal mandates for state, local, or tribal governments. Nor does this rule have federal mandates that may result in the expenditures of \$100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA. Nothing in the proposed rule would

significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule will impose no direct compliance costs on states. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements proposed by this action impact private sector businesses, particularly the automotive and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule incorporates by reference technical standards adopted by the Society of Automotive Engineers (SAE). We believe these standards are well accepted by industry.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this proposed rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Air pollution control, Gasoline, Incorporation by reference, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 30, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows.

Authority: 42 U.S.C. 7401-7671q.

2. Section 86.094-38 is proposed to be amended by adding paragraph (g)(21) to read as follows:

§ 86.094-38 Maintenance instructions.

* * * * *

(g) * * *

(21) In lieu of meeting the requirements of paragraphs (g)(5) through (g)(9) of this section, manufacturers may upload the required information in full text on its manufacturer-specific Web site as required in § 86.096-38(g)(3). In the alternative, manufacturers may upload an index of the required information on its Web site consistent with paragraphs (g)(5), (g)(6), and (g)(9) of this section.

3. Section 86.096-38 is proposed to be added to subpart A to read as follows:

§ 86.096-38 Maintenance instructions.

(a)-(f) [Reserved]

(g) Emission control diagnostic service information.

(1) Manufacturers are subject to the provisions of this paragraph (g) beginning in the 1996 model year for manufacturers of light-duty vehicles and light-duty trucks, and beginning in the 2005 model year for manufacturers of heavy-duty vehicles and heavy-duty engines weighing 14,000 pounds gross vehicle weight (GVW) and less that are subject to the OBD requirements of this part.

(2) *General requirements.* (i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, 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, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(ii) *Definitions.* The following definitions apply for this paragraph (g).

(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 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 disables 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.

(3) *Information dissemination.* By [date six months after the effective date of the final rule], each manufacturer shall provide or cause to be provided a manufacturer-specific World Wide Web site available to the persons specified in paragraph (g)(2)(i) of this section and to any other interested parties containing in the information specified in paragraph (g)(2)(i) of this section for 1996 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (g)(11) through (g)(15) of this section. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (g)(5) of this section.

(ii) Be updated at the same time as dealership World Wide Web sites, but in no instance less than 14 days after new information or changes to existing information have been changed or updated on the manufacturer's dealership site.

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer's Web site.

(iv) Provide Short-Term (≤ 24 hours), Mid-Term (30 day period), and Long-Term (365 day period) Web site subscription options to any person specified in paragraph (g)(1) of this section at a fair and reasonable cost as specified in paragraph (g)(6) of this section for each of the options. Reasonable cost shall not exceed \$20 for short-term access, \$300 for mid-term access, and \$2500 for long-term access in year 2001 dollars.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, vehicle identification number (VIN),

etc., while allowing ready identification of the latest vehicle calibration.

(vi) Provide accessibility using common, readily available software and shall not require the use of proprietary software, hardware, viewers, or browsers. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from Government Web sites and automotive-related Web sites.

(viii) Allow access to the manufacturer Web sites with no limits on the modem speed by which aftermarket service providers or other interested parties can connect to the manufacturer Web site.

(4) *Small volume provisions for information dissemination.* (i) Manufacturers with annual sales of less than 5,000 vehicles shall have until [12 months after the effective date of the final rule] to launch their individual Web sites as required by paragraph (g)(2) of this section.

(ii) Manufacturers with annual sales of less than 1,000 vehicles may, in lieu of meeting the requirement of paragraph (g)(3) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained by the persons specified in paragraph (g)(1) of this section.

(5) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites excluding indirect information specified in paragraphs (g)(11) through (g)(15) of this section. The required information includes, but is not limited to:

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

(ii) 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;

(iii) 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 and shall make such information available to aftermarket service providers on their respective manufacturer Web sites;

(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); and

(vi) Information needed to start the vehicle when the vehicle is equipped with an anti-theft system or other systems that disables the engine and prevents it from starting after the completion of an emissions-related repair.

(6) *Cost of required information.* All information required to be made available by this section shall be made available at a fair and reasonable price to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the level of detail of the information, the cost of the information prior to [effective date of this paragraph], volume discounts, and inflation.

(7) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of this paragraph (g) and section 202(m)(5) of the Clean Air Act.

(8) *Third party information providers.* By [date 6 months after publication of the final rule], manufacturers shall, for model year 2002 and later vehicles and engines, provide the required emissions-related information as specified in paragraph (g)(5) of this section.

(i) Directly to third-party information providers as defined in paragraph (g)(2)(ii) of this section in electronic format such as diskette or CD-ROM using non-proprietary software, in English; or

(ii) Indirectly via a Web site other than that required by paragraph (g)(3) of

this section for aftermarket service providers.

(9) *Required emissions-related training information.* By [date 6 months after publication of final rule], for emissions-related training information, manufacturers shall:

(i) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 1994 and newer vehicles. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site.

(ii) Video tape or otherwise duplicate any emissions-related training courses and instructional sessions that are made available to manufacturer dealerships via satellite or the World Wide Web and make these items available for purchase as described in paragraph (g)(3) of this section. Additionally, manufacturers shall tape or otherwise duplicate any emissions-related class-room training courses made available to manufacturer franchised dealerships and make those duplicates available for sale at a fair and reasonable price on the manufacturers Web site.

(iii) Provide access to third party training providers as defined in paragraph (g)(2)(ii) of this section all emission-related training courses transmitted via satellite or Internet offered to their franchised dealerships

(10) *Timeliness and maintenance of information dissemination.*

Manufacturers must make the information required under paragraphs (g)(5) and (g)(8) of this section available to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines on their Web site within three months of model introduction.

After this three month period, the information must be available and updated on the manufacturer Web site at the same time that the information is made available and updated to manufacturer franchised dealerships, except as otherwise specified in this section. Beginning with the 1996 model year, manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (g)(2)(ii) of this section for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived information on the manufacturer Web site and how it can be obtained by interested parties.

Archived information must be made

available on demand and at a fair and reasonable price.

(11) *Reprogramming Information.* (i) For model years 1996 and later, manufacturers shall make available to the persons specified in paragraph (g)(1) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of their choice at the same time they are made available to dealerships.

(ii) For model years 1996 and later manufacturers shall be responsible for ensuring that persons specified in paragraph (g)(1) of this section shall have access to reprogramming services via manufacturer dealerships at a fair and reasonable cost and in a timely manner.

(iii) For model years 1996 and later manufacturers shall provide persons specified in paragraph (g)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(iv) For all 2003 and later OBD vehicles equipped with reprogramming capability, manufacturers shall comply with SAE J2534.

(v) For model years 2003 and later, manufacturers shall comply with SAE Standardized Practice J1962, "Diagnostic Link Connector" for the purposes of pass-through reprogramming.

(vi) For model years 2003 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer specific software applications needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems.

(vii) Compliance with SAE J2534 is not mandatory for model years prior to 2003, provided that the manufacturer makes available to aftermarket scan tool manufacturers by [date 6 months after the effective date of the final rule] the following information necessary for reprogramming the Electronic Control Unit (ECU):

(A) 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.).

(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 (descriptions for procedures such as connection, initialization, performing

and verifying programming/download, and termination).

(D) 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.

(12) *Generic and enhanced information for scan tools.* By [date 30 days after the effective date of the final rule], vehicle manufacturers shall make available to equipment and tool companies all generic and enhanced service information including bi-directional control and data stream information as defined in paragraph (g)(2)(ii) of this section. This requirement applies for 1996 and later model year vehicles.

(i) The information required by this paragraph shall be transmitted electronically to the aftermarket tool and equipment companies in English to a secure World Wide Web site. This site shall be agreed upon between manufacturers and aftermarket tool and equipment companies. The information required by this paragraph (g)(12) shall be provided using common document formats.

(ii) In addition to the generic and enhanced defined in paragraph (g)(2)(ii) of this section, vehicle manufacturers shall also make available the following information necessary for developing generic diagnostic scan tools:

(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, performing and verifying programming/download, and termination).

(D) 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.

(E) The necessary calibrations via CD-ROM, diskette, or the Internet.

(F) Information that describes which interfaces, or combinations of interfaces, from each of the categories as described in paragraphs (g)(12)(i)(A) through (E) of this section.

(13) *Availability of vehicle manufacturer-specific scan tools.*

Manufacturers shall make available for sale to the persons specified in paragraph (g)(2) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost. Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third-party of their choice.

(14) *Changing content of manufacturer-specific scan tools.*

Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (g)(2) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer specific tool.

(15) *Special tools.* (i) Manufacturers who have developed special tools to extinguish the malfunction indicator light (MIL) for Model Years 1994 through 2001 shall make available the necessary information available to equipment and tool companies to design a comparable generic tool. This information shall be made available to equipment and tool companies no later than [date 90 days following the effective date of the Final Rule].

(ii) Manufacturers are prohibited from requiring special tools to extinguish the malfunction indicator light (MIL) beginning with Model Year 2002.

(16) *Reference materials.*

Manufacturers shall conform with the following Society of Automotive Engineers (SAE) standards. Copies of these documents may be obtained from SAE 400 Commonwealth Drive, Warrendale, PA 15096-0001, or at www.sae.org. The following documents are Incorporated by Reference.

(i) For Web-based delivery of service information, vehicles manufacturers shall comply with SAE Recommended Practice J1930, "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms." (May 1988). This recommended practice standardizes various terms, abbreviations, and acronyms associated

with On-board diagnostics. Vehicle manufacturers shall comply with J1930 beginning with Model Year 2003.

(ii) For OBD vehicle communications, vehicle manufacturers shall comply with SAE Recommended Practice J2284, "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS." (February 1999). This recommended practice defines a level of standardization in the implementation of a 500 KBPS vehicle communication network using the Controller Area Network (CAN) protocol. Vehicle manufacturers shall comply with J2284 beginning with Model Year 2003.

(iii) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J1962 (FEB 98), "Diagnostic Connector". This recommended practice specifies the boundaries within the passenger compartment where vehicle manufacturers may place the OBD diagnostic link connector. Vehicle manufacturers shall comply with J1962 beginning with model year 2003.

(iv) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J2534 (DEC 00), "Specifications for Pass-Through Reprogramming." This recommended practice provides technical specifications and information that vehicle manufacturers must supply to aftermarket tool and equipment companies to develop aftermarket pass-through reprogramming tools. Vehicle manufacturers shall comply with J2534 beginning with model year 2003.

(17) *Reporting Requirements.* Manufacturers shall provide to the Administrator reports on an annual basis and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests. This is 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 requests counts all the files which have been requested, including pages, graphics, etc.

(ii) Average successful requests per day (measured in number of files). This is defined as reports of the average successful requests per day of all files

which have been requested, including pages, graphics, etc.

(iii) Total successful requests for pages [report on number of pages (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 requests counts all the documents that were returned or where the document was requested but was not needed because it had not been recently modified and the user could use a cached copy.

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

(v) Total redirected requests (measured in number of files). This is defined as redirected requests that indicate that the user was directed to a different file instead.

(vi) Number of distinct files requested (measured in number of files). This is defined as the number of different file types that were requested (i.e. html, pdf, txt).

(vii) Number of distinct hosts served (measured in number of files). This is defined as reports on the number of different computers where requests have come from.

(viii) Corrupt logfile lines (measured in number of lines). This is defined as the lines in the logfile that were unreadable by the computer.

(ix) Total data transferred (measured in bytes). This is defined as the total amount of data transferred from one place to another.

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

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

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

(xiii) Hourly Summary (measured in number of files/pages by hour of day). This is defined as the total number of requests for each hour of the day, over a specific time period.

(xiv) Request Report (measured in number of files/pages by individual URL). This is defined as which files were downloaded.

(xv) Referrer Report (measured in number of files/pages by individual referring URL). This is defined as which pages linked to your files.

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

(xvii) Browser Report (measured in number of files/pages by browser type, i.e., Mozilla 4.0). This is defined as a list of the detailed versions of browsers used.

(18) *Prohibited Acts, Liability and Remedies.* (i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (g), or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (g).

(ii) Any person who fails or causes the failure to comply with any provision of this paragraph (g) is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision of this paragraph (g) shall be subject to a civil penalty of not more than \$27,500 per day for each violation. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

4. Section. 86.1808-01 is proposed to be amended by revising paragraph (f) to read as follows:

§ 86.1808-01 Maintenance instructions.

* * * * *

(f) Emission control diagnostic service information.

(1) Manufacturers are subject to the provisions of this paragraph (f) beginning in the 2001 model year for manufacturers of light-duty vehicles and light-duty trucks, and beginning in the 2005 model year for manufacturers of heavy-duty vehicles and heavy-duty engines weighing 14,000 pounds gross vehicle weight (GVW) and less that are subject to the OBD requirements of this part.

(2) *General requirements.* (i) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, 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, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(ii) *Definitions.* The following definitions apply for this paragraph (f):

(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 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 disables 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 an 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.

(3) *Information dissemination.* By [date six months after the effective date of the final rule], each manufacturer shall provide or cause to be provided a manufacturer-specific World Wide Web site available to the persons specified in paragraph (f)(2)(i) of this section and to any other interested parties containing in the information specified in paragraph (f)(2)(i) of this section for 2001 and later model year vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraphs (f)(11) through (f)(15) of this section. Each manufacturer Web site shall:

(i) Provide access in full-text to all of the information specified in paragraph (f)(5) of this section.

(ii) Be updated at the same time as dealership World Wide Web sites, but in no instance less than 14 days after new information or changes to existing information have been changed or updated on the manufacturer's dealership site.

(iii) Provide users with a description of the minimum computer hardware and software needed by the user to access that manufacturer's information (e.g., computer processor speed and operating system software). This description shall appear when users first log-on to the home page of the manufacturer's Web site.

(iv) Provide Short-Term (≤ 24 hours), Mid-Term (30 day period), and Long-Term (365 day period) Web site subscription options to any person specified in paragraph (f)(1) of this section at a fair and reasonable cost as specified in paragraph (f)(6) of this section for each of the options. Reasonable cost shall not exceed \$20 for short-term access, \$300 for mid-term access, and \$2500 for long-term access in year 2001 dollars.

(v) Allow the user to search the manufacturer Web site by various topics including but not limited to model, model year, key words or phrases, vehicle identification number (VIN), etc., while allowing ready identification of the latest vehicle calibration.

(vi) Provide accessibility using common, readily available software and shall not require the use of proprietary software, hardware, viewers, or browsers. Manufacturers shall also provide hyperlinks to any plug-ins, viewers or browsers (e.g. Adobe Acrobat or Netscape) needed to access the manufacturer Web site.

(vii) Allow simple hyper-linking to the manufacturer Web site from Government Web sites and automotive-related Web sites.

(viii) Allow access to the manufacturer Web sites with no limits on the modem speed by which aftermarket service providers or other interested parties can connect to the manufacturer Web site.

(4) *Small volume provisions for information dissemination.* (i) Manufacturers with annual sales of less than 5,000 vehicles shall have until [12 months after the effective date of the final rule] to launch their individual Web sites as required by paragraph (f)(2) of this section.

(ii) Manufacturers with annual sales of less than 1,000 vehicles may, in lieu of meeting the requirement of paragraph (f)(3) of this section, request the Administrator to approve an alternative method by which the required emissions-related information can be obtained by the persons specified in paragraph (f)(1) of this section.

(5) *Required information.* All information relevant to the diagnosis and completion of emissions-related repairs shall be posted on manufacturer Web sites excluding indirect information specified in paragraphs (f)(11) through (f)(15) of this section. The required information includes, but is not limited to:

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

(ii) 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;

(iii) 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 and shall make such information available to aftermarket service providers on their respective manufacturer Web sites;

(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); and

(vi) Information needed to start the vehicle when the vehicle is equipped with an anti-theft system or other systems that disables the engine and prevents it from starting after the completion of an emissions-related repair.

(6) *Cost of required information.* All information required to be made available by this section shall be made available at a fair and reasonable price to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines. In determining whether a price is fair and reasonable, consideration may be given to relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size of the manufacturer), the quantity of material contained in a publication, the level of detail of the information, the cost of the information prior to [effective date of the final rule], volume discounts, and inflation.

(7) *Unavailable information.* Any information which is not provided at a fair and reasonable price shall be considered unavailable, in violation of this paragraph (f) and section 202(m)(5) of the Clean Air Act.

(8) *Third party information providers.* By [date 6 months after publication of the final rule], manufacturers shall, for model year 2002 and later vehicles and engines, provide the required emissions-related information as specified in paragraph (f)(5) of this section.

(i) Directly to third-party information providers as defined in paragraph (f)(2)(ii) of this section in electronic

format such as diskette or CD-ROM using non-proprietary software, in English; or

(ii) Indirectly via a Web site other than that required by paragraph (f)(3) of this section for aftermarket service providers.

(9) *Required emissions-related training information.* By [date 6 months after publication of the final rule], for emissions-related training information, manufacturers shall:

(i) Provide on the manufacturer Web site an index of all emissions-related training information available for purchase by aftermarket service providers for 1994 and newer vehicles. The index shall describe the title of the course or instructional session, the cost of the video tape or duplicate, and information on how to order the item(s) from the manufacturer Web site.

(ii) Video tape or otherwise duplicate any emissions-related training courses and instructional sessions that are made available to manufacturer dealerships via satellite or the World Wide Web and make these items available for purchase as described in paragraph (f)(3) of this section. Additionally, manufacturers shall tape or otherwise duplicate any emissions-related class-room training courses made available to manufacturer franchised dealerships and make those duplicates available for sale at a fair and reasonable price on the manufacturers Web site.

(iii) Provide access to third party training providers as defined in paragraph (f)(2)(ii) of this section all emission-related training courses transmitted via satellite or Internet offered to their franchised dealerships

(10) *Timeliness and maintenance of information dissemination.* Manufacturers must make the information required under paragraphs (f)(5) and (f)(8) of this section available to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines on their Web site within three months of model introduction. After this three month period, the information must be available and updated on the manufacturer Web site at the same time that the information is made available and updated to manufacturer franchised dealerships, except as otherwise specified in this section. Beginning with the 1996 model year, manufacturers must maintain the required information on their Web sites in full-text as defined in paragraph (f)(2)(ii) for a minimum of 15 years after model introduction. Subsequent to this fifteen year period, manufacturers may archive the information in the manufacturer's format of choice and provide an index of the archived

information on the manufacturer Web site and how it can be obtained by interested parties. Archived information must be made available on demand and at a fair and reasonable price.

(11) *Reprogramming Information.* (i) For model years 2001 and later, manufacturers shall make available to the persons specified in paragraph (f)(1) of this section all emissions-related recalibration or reprogramming events (including driveability reprogramming events that may affect emissions) in the format of their choice at the same time they are made available to dealerships.

(ii) For model years 2001 and later manufacturers shall be responsible for ensuring that persons specified in paragraph (f)(1) of this section shall have access to reprogramming services via manufacturer dealerships at a fair and reasonable cost and in a timely manner.

(iii) For model years 2001 and later manufacturers shall provide persons specified in paragraph (f)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(iv) For all 2003 and later OBD vehicles equipped with reprogramming capability, manufacturers shall comply with SAE J2534.

(v) For model years 2003 and later, manufacturers shall comply with SAE Standardized Practice J1962, "Diagnostic Link Connector" for the purposes of pass-through reprogramming.

(vi) For model years 2003 and later, manufacturers shall make available to aftermarket service providers the necessary manufacturer specific software applications needed to initiate pass-through reprogramming. This software shall be able to run on a standard personal computer that utilizes standard operating systems.

(vii) Compliance with SAE J2534 is not mandatory for model years prior to 2003, provided that the manufacturer makes available to aftermarket scan tool manufacturers by [date 6 months after the effective date of the final rule] the following information necessary for reprogramming the Electronic Control Unit (ECU):

(A) 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.).

(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 (descriptions for procedures such as connection, initialization, performing and verifying programming/download, and termination).

(D) 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.

(12) *Generic and enhanced information for scan tools.* By [date 30 days after the effective date of the final rule], vehicle manufacturers shall make available to equipment and tool companies all generic and enhanced service information including bi-directional control and data stream information as defined in paragraph (f)(2)(ii) of this section. This requirement applies for 2001 and later model year vehicles.

(i) The information required by this paragraph shall be transmitted electronically to the aftermarket tool and equipment companies in English to a secure World Wide Web site. This site shall be agreed upon between manufacturers and aftermarket tool and equipment companies. The information required by this paragraph (f)(12) shall be provided using common document formats.

(ii) In addition to the generic and enhanced defined in paragraph (f)(2)(ii) of this section, vehicle manufacturers shall also make available the following information necessary for developing generic diagnostic scan tools:

(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, performing and verifying programming/download, and termination).

(D) 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.

(E) The necessary calibrations via CD-ROM, diskette, or the Internet.

(F) Information that describes which interfaces, or combinations of interfaces,

from each of the categories as described in paragraphs (f)(12)(ii)(A) through (E) of this section.

(13) *Availability of vehicle manufacturer-specific scan tools.*

Manufacturers shall make available for sale to the persons specified in paragraph (f)(2) of this section their own manufacturer-specific diagnostic tools at a fair and reasonable cost.

Manufacturers who develop different versions of one or more of their diagnostic tools that are used in whole or in part for emission-related diagnosis and repair shall insure that all emission-related diagnosis and repair information is available for sale to the aftermarket at a fair and reasonable cost. Manufacturers shall provide technical support to aftermarket service providers for the tools described in this section, either themselves or through a third-party of their choice.

(14) *Changing content of manufacturer-specific scan tools.*

Manufacturers who opt to remove non-emissions related content from their manufacturer-specific scan tools and sell them to the persons specified in paragraph (f)(2) of this section shall adjust the cost of the tool accordingly lower to reflect the decreased value of the scan tool. All emissions-related content that remains in the manufacturer-specific tool shall be identical to the information that is contained in the complete version of the manufacturer specific tool.

(15) *Special tools.* (i) Manufacturers who have developed special tools to extinguish the malfunction indicator light (MIL) for Model Years 1994 through 2001 shall make available the necessary information available to equipment and tool companies to design a comparable generic tool. This information shall be made available to equipment and tool companies no later than [date 90 days following the effective date of the Final Rule].

(ii) Manufacturers are prohibited from requiring special tools to extinguish the malfunction indicator light (MIL) beginning with Model Year 2002.

(16) *Reference materials.*

Manufacturers shall conform with the following Society of Automotive Engineers (SAE) standards. Copies of these documents may be obtained from SAE 400 Commonwealth Drive, Warrendale, PA 15096-0001, or at www.sae.org. The following documents are Incorporated by Reference.

(i) For Web-based delivery of service information, vehicles manufacturers shall comply with SAE Recommended Practice J1930, "Electrical/Electronic Systems Diagnostic Terms, Definitions, Abbreviations, and Acronyms." (May

1988). This recommended practice standardizes various terms, abbreviations, and acronyms associated with On-board diagnostics. Vehicle manufacturers shall comply with J1930 beginning with Model Year 2003.

(ii) For OBD vehicle communications, vehicle manufacturers shall comply with SAE Recommended Practice J2284, "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS." (February 1999). This recommended practice defines a level of standardization in the implementation of a 500 KBPS vehicle communication network using the Controller Area Network (CAN) protocol. Vehicle manufacturers shall comply with J2284 beginning with Model Year 2003.

(iii) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J1962 (FEB 98), "Diagnostic Connector". This recommended practice specifies the boundaries within the passenger compartment where vehicle manufacturers may place the OBD diagnostic link connector. Vehicle manufacturers shall comply with J1962 beginning with model year 2003.

(iv) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J2534 (DEC 00), "Specifications for Pass-Through Reprogramming." This recommended practice provides technical specifications and information that vehicle manufacturers must supply to aftermarket tool and equipment companies to develop aftermarket pass-through reprogramming tools. Vehicle manufacturers shall comply with J2534 beginning with model year 2003.

(17) *Reporting Requirements.* Manufacturers shall provide to the Administrator reports on an annual basis and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests. This is 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 requests counts all the files which have been requested, including pages, graphics, etc.

(ii) Average successful requests per day (measured in number of files). This is defined as reports of the average successful requests per day of all files which have been requested, including pages, graphics, etc.

(iii) Total successful requests for pages [report on number of pages (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 requests counts all the documents that were returned or where the document was requested but was not needed because it had not been recently modified and the user could use a cached copy.

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

(v) Total redirected requests (measured in number of files). This is defined as redirected requests that indicate that the user was directed to a different file instead.

(vi) Number of distinct files requested (measured in number of files). This is defined as the number of different file types that were requested (i.e., html, pdf, txt).

(vii) Number of distinct hosts served (measured in number of files). This is defined as reports on the number of different computers where requests have come from.

(viii) Corrupt logfile lines (measured in number of lines). This is defined as the lines in the logfile that were unreadable by the computer.

(ix) Total data transferred (measured in bytes). This is defined as the total amount of data transferred from one place to another.

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

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

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

(xiii) Hourly Summary (measured in number of files/pages by hour of day). This is defined as the total number of requests for each hour of the day, over a specific time period.

(xiv) Request Report (measured in number of files/pages by individual URL). This is defined as which files were downloaded.

(xv) Referrer Report (measured in number of files/pages by individual referring URL). This is defined as which pages linked to your files.

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

(xvii) Browser Report (measured in number of files/pages by browser type, i.e., Mozilla 4.0). This is defined as a list of the detailed versions of browsers used.

(18) *Prohibited Acts, Liability and Remedies.* (i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (f) or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (f).

(ii) Any person who fails or causes the failure to comply with any provision of this subsection is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision in this paragraph (f) shall be subject to a civil penalty of not more than \$27,500 per day for each violation. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

[FR Doc. 01-14471 Filed 6-7-01; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF96

Endangered and Threatened Wildlife and Plants; Proposed Establishment of Nonessential Experimental Population Status for 4 Fishes Into the Tellico River, From the Backwaters of Tellico Reservoir Upstream to Tellico River Mile 33, in Monroe County, Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.
