

TESTIMONY OF
JAMES MADILL ON BEHALF OF
THE AUTOMOTIVE PARTS REBUILDERS ASSOCIATION AND
THE AUTOMOTIVE ENGINE REBUILDERS ASSOCIATION
ON PROPOSED MODIFICATIONS TO EPA'S SERVICE
INFORMATION RULE
ANN ARBOR, MICHIGAN
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My name is James Madill and I am Director of Transmission and Drivetrain Industry Relations for the Automotive Parts Rebuilders Association. APRA is the trade association for businesses which remanufacture the movable components of a motor vehicle other than engines. I am here this morning representing APRA and the Automotive Engines Rebuilders Association, which represents companies which remanufacture motor vehicle engines. The combined membership of APRA and AERA is approximately 6000, most of which are located in the United States.

The members of APRA and AERA have the primary responsibility for seeing that rebuilt engines and other rebuilt parts function properly, do not emit excess emissions and interact correctly with the OBD system and its monitors. For these reasons, we are concerned about the availability of information so that the repair involved in rebuilding can be done efficiently and economically.

APRA and AERA are generally pleased with the changes EPA is proposing to the OBD information access rule. The original rule, while well-intended, did not provide the facility or ease of access which the aftermarket needs if it is to continue adequately serving the driving public. Moreover, despite the rule, some vital information continued to be withheld, and the changes should make such instances rarer.

However, we have certain concerns about the new rule which we would like to see addressed before it is finalized.

One major concern is that EPA clarify that rebuilding falls within the definition of service and repair and acknowledge that rebuilders are repairing or servicing motor vehicles or motor vehicle engines. To do so does not broaden the reach of the statute. Rebuilding or remanufacturing, whichever term you choose to use, is repair. It is generally more sophisticated than ordinary repair, but its purpose is the same, to make a malfunctioning part work properly again. Whether rebuilding occurs on the back bench of a garage, in a machine shop, or on an assembly line basis in a plant designed for such purpose should make no difference. The end result is a repaired part. However, unless EPA makes it clear that rebuilders fall within the group benefited by the rule, rebuilders could be denied access to information necessary for proper repair. Therefore, we request that EPA add language to the rule specifying that engine and parts rebuilders are persons engaged in service and repair under the rule and are “aftermarket service providers” as defined in Sections 86.094-38(g)(2) and 86.1808-01(f)(2).

We are also concerned that the examples used in the definition of “emissions-related information” may be construed as narrowing the scope of information that must be provided. We agree with EPA’s effort to more precisely list those types of information which must be disclosed, but believe that these categories should not be and are not all-inclusive. In the current rule EPA makes it clear that emissions-related information includes information related to the powertrain system, fuel system, ignition system and transmission system, none of which are mentioned in the new rule. While much of the information related to these systems may fall within the categories

EPA does mention, we believe that EPA should also add language, such as in the present rule, that emissions information includes information for any system, component, or part, such as the powertrain system, fuel system, ignition system and transmission system, that is likely to impact emissions. Doing so would deter any manufacturer from making artificial distinctions among information which must be disclosed and that which can be withheld.

Moreover, we believe that EPA should also add the language from the current rule which would include as emissions-related information “any other information specified by the Administrator to be relevant for the diagnosis and repair of an emissions failure found through the Inspection and Maintenance program...” Such language would give EPA the flexibility to require disclosure of information related to technological changes not contemplated now or not now deemed relevant to emissions but later discovered to be so, without the need for further rulemaking.

Repairers and rebuilders of the on-board-diagnostic computer itself also need specific information which will allow them to re-initialize a computer when it is being repaired after being removed from the vehicle. This is especially a concern now that vehicles are being equipped with sophisticated anti-theft systems which would prevent re-initializing the computer during repair without at least the temporary ability to bypass the anti-theft system. While the proposed rule requires the disclosure of information needed to start a vehicle equipped with an anti-theft system, it does not extend this to starting the computer if it has been removed from the vehicle. The rule needs to be amended to do so.

We are also concerned about an apparent oversight in sections (g)(5) and (f)(5) of the new regulation which omits one category of emissions-information from that which needs to be included on the manufacturer's web site. Paragraph (vii) in the definition of emissions-related information includes:

“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 DTC's.”

However, sections (g)(5) and (f)(5) do not include this information and therefore it would not have to be posted on the web site. We see no reason for this omission and believe that this information should be included on the web site also.

The issue of price is a concern to rebuilders also, but this issue is being addressed by the service facilities in their statement. We join in their comments and will not repeat them here. However, we do wish to mention one seemingly small change which could seriously impact the price issue. In Section 86.094-38(g)(3) of the current rule EPA lists factors relevant to determining if information is being offered at a fair and reasonable price and states that the Administrator shall consider these and other relevant factors when determining whether the price for information is fair and reasonable.

The new rule, however, changes “shall” to “may” and therefore allows, but does not require, the Administrator to consider these factors in determining if a price is fair and reasonable. Therefore, EPA may choose to ignore these factors if it desires and a decision on what price is fair

and reasonable can be made by it on any basis it desires – or on no basis at all. This is a step backwards. Without clear guidelines consistently applied, there is no measuring stick for what is fair and reasonable. Changing this requirement creates great uncertainty because neither the aftermarket provider nor the manufacturer will have a realistic idea of what criteria EPA will use to judge whether a price is fair and reasonable.

The fact that the new rule sets limits on the price for access to the manufacturer's web site does not obviate the need for a reasonableness determination. In fact by establishing a cap the new rule may be inviting an unscrupulous manufacturer to choose a price near the cap, on the assumption that it will not be challenged, even though the manufacturer could not otherwise justify the price. Therefore, we believe that EPA must be required, not merely allowed, to use the listed factors when determining whether the price charged for information is fair and reasonable.

We are also concerned about how information may be accessed on a manufacturer's web site. While access by model, model year and key words and phrases is important, we do not see a real need for access by VIN number. If you have the VIN number you also know the model and model year and can access the information that way. However, we would prefer to see access by part number. Many times a service provider will have a defective part, will know its part number and would be better able to access the precise information he needs faster and more efficiently by part number than by having to access larger volumes of information if access is only by model and year. Moreover, since many models use different part numbers at different times and for different reasons and some part numbers are used across different model lines, access by part number will allow the service provider to ensure that he has the most exact and correct information he needs for that job.

Therefore, we would like to see the rule amended to allow each web site to be searched by part number.

Finally, we believe that the fifteen year period during which emissions-related information must be kept on the web site is too short. The average age of automobiles on American roads has been increasing every year for the last decade. As of January 1st of this year the average age of domestic cars in the U.S. was 10.2 years, the highest it has ever been. This means that there are as many domestic cars on the road over 10.2 years old as under that age. To cut off quick and economical access to a large portion of these older vehicles from the market segment which caters to them, i.e., the independent aftermarket, will ensure that emissions-related repairs to these vehicles will be expensive and in many cases will not be done. We recommend that the information be required to be left on the web site at least 20 years.

Additionally, we strongly support the application of these requirements to heavy duty vehicles up to 14,000 GVW. The heavy duty aftermarket repair and service providers have the same need for this information as those who service and repair light duty vehicles. Moreover, we believe that these requirements are appropriate for heavy duty vehicles above 14,000 GVW. Even though the systems which are monitored on these larger vehicles may be slightly different or may be monitored in a slightly different way, this does not affect the need of aftermarket providers for the emissions-related information which is relevant to these vehicles. While we recognize that EPA cannot at this late hour amend the rule to include these heavier vehicles without a further hearing, we would request that EPA, in its commentary to the final rule, indicate that it would expect to apply similar information access requirements to heavy duty vehicles above 14,000 lbs. GVW. This would

give the manufacturers of these vehicles notice so that they can consider information access issues when designing their OBD systems and ensure the aftermarket providers servicing this market that they will not be shut out from repairing and servicing these vehicles.

Finally, we also want EPA to know that we support the comments and issues raised today by the Motor and Equipment Manufacturers Association, the Automotive Aftermarket Industry Association and the Automotive Service Association.

Thank you for your time and consideration.