aftermarket "any and all information" needed to make use of the OBD system and to make emission-related repairs, excluding trade secrets. The scope of information that must be provided includes any direct and indirect service and repair information that a manufacturer provides to its authorized dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Examples of direct information are service manuals; TSBs; training material or information; diagnostic information; wiring diagrams; and any written memoranda or guidance provided to dealers. Examples of indirect information are emission-related reprogramming events; data stream information; and bi-directional control. (Indirect information is discussed below.)

At this time, manufacturers are not required to supply any emission-related information to the aftermarket that they do not make available to their authorized dealerships or other third parties, subject to the requirements regarding specific types of information, like data stream information, that must be provided under these regulations. For example, if a manufacturer does not supply functional control strategies to its dealers, directly or indirectly, it is not required to supply them to the aftermarket service industry.

D. Cost of Service Information

Summary of Proposal: The proposed rule required that emission-related information be made available at a reasonable price (i.e., what would be expected if the suppliers of information were acting as competitors). In determining whether the price of information is reasonable, EPA indicated it would consider all relevant factors, including, but not limited to, the cost to a manufacturer of preparing and/ or providing the information, the type of information, the format in which it is provided, and the price charged by other manufacturers for similar information.

The proposed regulations further required that when manufacturers provide the same information to independent technicians and dealerships, the price to independent technicians for such information would not exceed the lowest price charged to any of a manufacturer's authorized dealerships.

Summary of Comments: Comments from manufacturers focused primarily on the authority of EPA to regulate the cost of emission-related information, determination of the "reasonable" cost of service information, and the proposed requirement that the cost of service information sold by manufacturers to the aftermarket "shall not exceed the lowest price at which it is provided to any authorized dealerships."

Analysis of Comments: Section 202(m)(5) of the CAA requires that vehicle manufacturers make emissionrelated information available. Available is defined as "that which can be got, had or reached or that one can avail oneself of."9 A prerequisite to getting an item is having the ability to afford it. The Agency is concerned that if emission-related service information is priced in a manner that precludes its purchase and subsequent use then it is unavailable as that term is commonly defined. Further, the cost of service information was of concern to Congress as evidenced by the statement of then Senator Gore, the Senator that introduced the "information availability" provision of the CAAA.10

Thus, cost is an integral part of availability and, therefore, within the purview of the Agency to consider in determining whether manufacturers make information available as required to the aftermarket.

The Agency believes that establishing factors to serve as reference points to evaluate whether the cost of information is reasonable, will serve as guidance for manufacturers, and help reduce the possibility that inappropriate pricing would occur in an effort to prevent the purchase of information and, thereby ensure that information is available at a reasonable cost. Manufacturers commented on several factors they believe should also serve as reference points for evaluating the cost of information. EPA agrees with some of the factors suggested and has incorporated them into the regulations. For a discussion of each factor, see the Response to Comments document.

EPA also believes that the burden of proof to demonstrate that the price of manufacturer service and repair information is unreasonable should be on the purchaser of that information.

As to the "lowest cost" requirement, EPA agrees with some of the commenters that such a provision could have unanticipated effects on direct aftermarket sales and on dealerships that distribute information. Therefore, this requirement has been deleted.

EPA Decision: On the basis of the comments and further EPA analysis, emission-related service information is to be made available at a reasonable price. This means the fair market 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 publication of this final rule, volume discounts, and inflation. EPA is not requiring that manufacturers sell information to aftermarket technicians at the lowest price charged to their dealerships.

E. Distribution of Service Information

Summary of Proposal: EPA proposed that emission-related service and repair information, whether distributed by the manufacturer or an intermediary, be reasonably accessible to all persons who service and repair motor vehicles. To qualify as reasonably accessible, the information must be available to independent technicians upon request without substantial delay. Further, manufacturers would be required to utilize reasonable means to make independent technicians aware that the information is available. Also, manufacturers would need to provide intermediaries with emission-related information in a timely manner in order that their products or services be available to independent technicians when needed. In all cases, manufacturers would retain full responsibility for compliance with section 202(m)(5). Failure to an intermediary to properly provide information does not relieve the manufacturer from responsibility to provide the information.

EPA subsequently suggested the use of the NTIS as a clearinghouse for service information. Manufacturers would be required to provide initial service, repair, diagnostic and parts information to the NTIS within thirty days of providing it to their franchised dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Service, repair, diagnostic and parts information, such as TSBs and troubleshooting manuals, issued to dealerships during any subsequent

⁹Webster's New World Dictionary, 3rd ed., p 94, 1988.

¹⁰ The Senator stated that "when we require [manufacturers] to promptly provide information needed, we recognize that we do not want to require somebody to provide a lot of expensive manuals absolutely for free, but we do not want the kind of charges that make this a profit center. We want them to provide the information which will allow competition in the aftermarket and allow small business operators to get in the repair business. Otherwise, you force vehicle owners to go only to the major automobile manufacturers' places of business." 36 *Cong. Rec.* 3272 (1990).