information is not provided directly to technicians nor consciously used in diagnosis and repair, such information, if contained in or made available through manufacturer tools, is a crucial element in the emission-related diagnosis and repair information provided by that tool. Therefore, it is indirect information which *must* be provided, either directly or indirectly, to the aftermarket, if it is emission-related.

Moreover, manufacturers may use changes to computer calibrations to fix mechanical malfunctions or to revise prior calibrations. In such cases, it is necessary for such information to be known to subsequent repair personnel in order to prevent subsequent repairs from causing increases in emissions.

EPA believes that much of the manufacturer equipment that a dealer uses for emission-related diagnosis and repairs possesses certain capabilities, such as being able to read fault codes, perform reprogramming or allow bidirectional control. The information that allows the manufacturer tools to perform such functions is indirect information that must be made available to the independent service industry.

As to Saab's comment that parts do not contain any supplementary information necessary to make emission-related repairs, EPA agrees. EPA has determined the language in subsection 202(m)(5) does not apply to information used to manufacture parts. Therefore, the references to parts will be removed from the definition.

EPA agrees with the commenters that there would be many functional control strategies with which independent technicians should familiarize themselves, and while this could be overwhelming, there is no evidence that the independent service industry wouldn't be up to the challenge. EPA believes that disclosure of functional control strategies would be beneficial in helping technicians to better understand the interactions of the on-board computer with the numerous sensors and actuators that comprise the varied emission control systems and thereby, help promote better and quicker diagnoses and repair of emission-related problems. However, at this time, EPA is only requiring manufacturers to supply functional control strategies directly to independent technicians if such strategies are supplied directly to their dealerships. To the extent such strategies are incorporated into a manufacturer's enhanced diagnostic tools, they must be made available to the aftermarket either through availability of manufacturer tools (at a reasonable price), or with appropriate

agreements to protect proprietary information, through generic tools.

As discussed in the Response to Comments document, EPA does not believe that this information has been shown to be needed for emission-related repairs and diagnosis at this time and release of at least some of this information may raise trade secrets concerns. It is EPA's position that if manufacturers believe this information is necessary to perform emission-related service they will provide this information to their dealerships and independent technicians. EPA will continue to review whether certain types of information should be made available to the repair community even if such information is not currently made available to authorized dealers.

EPA Decision: All emission-related data stream information made available to manufacture franchised dealers (or others in the service industry) will be made available to the aftermarket, either through provision of manufacturer equipment and tools or through information provided to generic equipment and tool manufacturers with appropriate agreements to protect proprietary information. Beginning on January 1,1997, a manufacturer can only provide bi-directional control to its dealerships if it has provided equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or provided such capabilities directly to independent technicians through provision of their own tools. Manufacturers are required to make bi-directional control information available for all model years beginning with model year 1994. However, for model years 1994–1996, where a manufacturer can prove that safeguards for bi-directional controls are only installed in tools not in vehicle onboard computers, then that manufacturer may receive a waiver from producing bi-directional controls for vehicles prior to the 1997 model year. However, no such waiver is available for other types of data stream information.

Functional control strategies will not be required to be made available to the aftermarket, except to the extent they are made available to authorized dealerships.

The reference to parts is deleted from the definition of indirect information. The definition of indirect information will now be "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. Enhanced Diagnostic Tools

Summary of Proposal: In the 1993 workshop notice, EPA indicated that according to section 202(m)(5) of the CAA, emission-related information provided by manufacturers indirectly to franchised dealers must also be provided to any person engaged in the repairing or servicing of motor vehicles. EPA stated that some manufacturers are or will be providing their dealers the ability to diagnose malfunctions and/or reprogram vehicle modules via enhanced diagnostic equipment. This equipment will not allow dealers to view the underlying computer codes, but will allow them to reprogram vehicles and use enhanced diagnostic information using the underlying code.

EPA believes that the enhanced diagnostic equipment provides franchised dealers indirectly with information that is needed to make emission-related diagnosis and repairs. EPA proposed to require that manufacturers offer their enhanced diagnostic equipment for sale to the aftermarket. This would enable manufacturers to comply with the requirements of section 202(m)(5) that information be made available to the aftermarket if it is made available to dealerships or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines while simultaneously protecting the proprietary interest of the manufacturers. It would also provide the aftermarket with the same capabilities as dealerships without divulging proprietary engine calibrations or recalibrations.

EPA proposed that manufacturers' enhanced diagnostic equipment be made available to the aftermarket at the same price at which it is sold to authorized dealerships. EPA believed that a reasonable price to charge the aftermarket is the same price at which the equipment is offered to franchised dealerships. Based on previous comments provided to EPA, EPA believed that manufacturers' enhanced diagnostic equipment are sold to dealerships independent of their franchise agreements. Therefore, the cost of such equipment can be readily determined or manufacturers could provide suggestions for determining the price of their equipment. EPA proposed to give manufacturers a one-year leadtime to prepare for aftermarket sales of enhanced equipment. EPA proposed that manufacturers must provide preliminary enhanced data stream information three months preceding model introduction, with final data