

MAR 26 2018

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

ENVIRONMENTAL APPEALS BOARD

In the Matter of:

Adrenaline Truck Performance, LLC

Respondent.

Docket No.
CAA-HQ-2018-8362

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
2. Complainant in this matter is the United States Environmental Protection Agency ("EPA"). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A.
3. The respondent in this matter is Adrenaline Truck Performance, LLC ("ATP" or "Respondent"). Respondent is a limited liability company organized under the laws of the State of Idaho with an office at 1854 E Lanark Street, Meridian, Idaho 83642. ATP is a

seller of aftermarket automotive parts and components (collectively “products”) specializing in diesel-powered trucks.

4. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

5. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (“Consolidated Rules”).
6. The EPA may administratively assess a civil penalty if the penalty sought is less than \$362,141. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.
7. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. §§ 22.1(a)(2), 22.4(a)(1); EPA Delegation 7-41-C.
8. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

9. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including particulate matter (“PM”), hydrocarbons (“HC”), oxides of nitrogen (“NO_x”), and carbon monoxide (“CO”). The Alleged Violations of Law, stated below, regard motor vehicles, and violations of the prohibitions in section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).
10. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a vehicle manufacturer from selling a new motor vehicle in the United States unless the vehicle is covered by a certificate of conformity.
11. EPA issues certificates of conformity to vehicle manufacturers (also known as “original equipment manufacturers” or “OEMs”) under section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicles conforms to applicable EPA requirements governing motor vehicle emissions.
12. Under section 202 of the CAA, 42 U.S.C. § 7521, EPA promulgated emission standards for PM, HC, NO_x, and CO. *See generally* 40 C.F.R. Part 86.
13. Under section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations requiring manufacturers of light-duty vehicles and light-duty trucks to install OBD systems on vehicles beginning with the 1994 model year. The regulations required the OBD system to monitor emission control components for any malfunction or deterioration causing exceedance of certain emission thresholds. When the OBD system detected a problem, a check-engine light on the dashboard of the vehicle alerted the

driver that a certain repair or repairs were needed. 40 C.F.R. § 86.1806-05. Thus, OBD is a critical element of design of the motor vehicle.

14. Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), prohibits any person from manufacturing, selling, offering to sell, or installing any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under Title II of the CAA, where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.
15. Section 203(a)(3)(A) of the CAA, 42 U.S.C. § 7522(a)(3)(A), prohibits any person from removing or rendering inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under Title II of the CAA.
16. Persons violating sections 203(a)(3)(A) and 203(a)(3)(B) of the CAA, 42 U.S.C. §§ 7522(a)(3)(A) and 7522(a)(3)(B), are subject to a civil penalty of up to \$3,750 for each for each violation that occurred prior to November 2, 2015, and up to \$4,527 for each violation that occurred on or after November 2, 2015. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.
17. Rather than referring a matter to the United States Department of Justice (“DOJ”) to commence a civil action, the EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$362,141 or if the EPA and the

DOJ jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. 42 U.S.C. § 7524(c); 40 C.F.R. § 19.4.

Definitions

18. Definitions, as the terms are used in this Consent Agreement:

- (a) “Aftermarket Defeat Device” means a motor vehicle part or component, including Electronic Tuning Products, Replacement Pipes, and Delete Kits, where a principal effect of the part or component is to bypass, defeat, or render inoperative a motor vehicle emission control device or element of design, including such emission control devices or elements required by 40 C.F.R. §§ 86.007-17 or 86.1806-05. *See* CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B).
- (b) “Element of design” means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. § 86.094-2. For example, manufacturers of diesel engines employ retarded fuel injection timing as a primary emission control device for emissions of oxides of nitrogen (“NOx”), while manufacturers of gasoline-powered engines employ spark timing as an emission control device. Manufacturers also employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created or emitted into the ambient air.

- (c) Exhaust gas recirculation (“EGR”) is an element of design in motor vehicles that reduces NO_x emissions, which are formed at the high temperatures caused during fuel combustion. By recirculating exhaust gas through the engine, EGR reduces engine temperature and NO_x emissions.
- (d) Diesel particulate filters (“DPFs”) are elements of design in diesel-powered motor vehicles that collect PM pollution contained in engine exhaust gas. Proper operation of the DPF requires periodic regeneration of the filter to prevent accumulated PM from clogging the filter.
- (e) Diesel oxidation catalysts (“DOCs”) are elements of design that reduce CO and NMHC emissions by promoting the conversion of those pollutants into less harmful gases in diesel-fueled motor vehicles.
- (f) Selective catalytic reduction (“SCR”), is an element of design that reduces NO_x emissions by chemically converting exhaust gas that contains NO_x into nitrogen and water through the injection of diesel exhaust fluid. Sensors in the SCR system to communicate with the OBD to ensure that SCR is properly controlling NO_x emissions.
- (g) Electronic control modules (“ECMs”) are devices that receives inputs from various sensors and outputs signals to control engine, vehicle, or equipment functions. The ECM uses software programming including calculations and tables of information to provide the appropriate outputs. ECMs continuously monitor engine operating parameters to manage the operation of the emission control systems and elements of design, such as fuel injection timing.

- (h) A standard requirement in modern motor vehicles and motor vehicle engines is an onboard diagnostic system (“OBD”), which must detect and report malfunctions of all monitored emission-related powertrain systems or components. CAA § 202(m), 42 U.S.C. § 7521(m); 40 C.F.R. §§ 86.007-17, 86.1806-05.
- (i) “Electronic Tuning Products” means aftermarket ECM programmers (including hardware commonly referred to as “tuners” and software commonly referred to as “tunes”) that have the effect of altering vehicle emissions control systems or elements of design, or facilitating the bypass or deletion of vehicle emissions control devices.
- (j) “Motor vehicle” is defined in section 216(2) of the CAA, 42 U.S.C. § 7550(2), as “any self-propelled vehicle designed for transporting persons or property on a street or highway.”
- (k) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. 42 U.S.C. § 7602(e).

Stipulated Facts

- 19. ATP is a person, as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
- 20. ATP is a seller of aftermarket automotive products and has sold three categories of products at issue here: (1) Electronic Tuning Products; (2) Replacement Pipes; and (3) Delete Kits.

21. Electronic Tuning Products, Replacement Pipes, and Delete Kits are designed and marketed for use with, or to become part of, a specific make, model and year (or range of years) of compatible motor vehicles.
22. Electronic Tuning Products are marketed to modify the performance of compatible motor vehicles (e.g., power output, torque, responsiveness of the engine, fuel efficiency).
23. “Electronic Tuning Products” means aftermarket ECM programmers (including hardware commonly referred to as “tuners” and software commonly referred to as “tunes”) that have the effect of altering vehicle emissions control systems or elements of design, or facilitating the bypass or deletion of vehicle emissions control devices.
24. Modifying OEM-certified ECM programming governing fuel injection and other elements of design may lead to significant engine-out emission increases compared to the OEM-certified programming.
25. Replacement Pipes physically remove, replace, or bypass the DPF, DOC, SCR, or other emission-related elements of design in a compatible motor vehicle’s exhaust system.
26. Delete Kits physically remove, replace, or bypass the EGR in a compatible motor vehicle’s exhaust system.
27. Between January 2013 and December 2015, ATP manufactured or sold at least 13,441 Electronic Tuning Products; 453 Replacement Pipes; and 2,018 Delete Kits. These products are listed in Appendix A.
28. The products identified in the preceding paragraph were designed and marketed for use on makes and models of motor vehicles and motor vehicle engines manufactured by General Motors Co. (“GMC” or “Chevrolet”); Ford Motor Co. (“Ford”); FCA US LLC and its predecessors (“FCA” or “Dodge”); and/or Cummins Inc. (“Cummins”). These

OEMs sought and obtained certificates of conformity from the EPA. In doing so, the manufacturers have certified that the motor vehicles have demonstrated compliance with applicable federal emission standards, including certified design configurations using elements of design such as fuel timing, catalytic converters, and OBD systems.

Alleged Violations of Law

29. EPA alleges that, between January 2013 and December 2015, Respondent manufactured, sold, or offered to sell, at least 15,912 Aftermarket Defeat Devices in violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), including 13,441 Electronic Tuning Products; 453 Replacement Pipes; and 2,018 Delete Kits. These Aftermarket Defeat Devices are parts or components intended for use with, or as part of, motor vehicles or motor vehicle engines, where a principal effect of the parts or components is to bypass, defeat, or render inoperative emission related devices or elements of design that are installed on a motor vehicle to meet the CAA's emission standards, and Respondent knew or should have known such parts and components were being offered for sale or installed for such use or put to such use.
30. The EPA alleges that, between January 2013 and December 2015, ATP has committed approximately 15,912 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by manufacturing, selling or offering for sale Aftermarket Defeat Devices, including Electronic Tuning Products, Replacement Pipes, and Delete Kits.

Terms of Agreement

31. The parties agree that resolving this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interests and the public interest.
32. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent: admits that the EPA has jurisdiction over this matter as stated above in ¶¶ 5 through 8; admits to the stipulated facts stated above in ¶¶ 19 through 28; neither admits nor denies the alleged violations of law stated above in ¶¶ 29 through 30; consents to the assessment of a civil penalty as stated below in ¶¶ 33 through 38; consents to any conditions specified in this Consent Agreement; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.
33. For the purpose of this proceeding, Respondent:
 - (a) agrees that this Consent Agreement states a claim upon which relief may be granted against Respondent;
 - (b) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Agreement, including any right of judicial review under section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
 - (c) waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to enforce this Consent Agreement or Final Order, or both, and to seek an additional penalty for

such noncompliance, and agrees that federal law shall govern in any such civil action;

- (d) consents to personal jurisdiction in any action to enforce this Consent Agreement or Final Order, or both, in the United States District Court for the District of Idaho and the United States District Court for the District of Columbia;
- (e) agrees that Respondent may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at EPA's unfettered discretion. If the EPA so consents, the agreement is binding on the party or parties to whom the duties are delegated;
- (f) acknowledges that this Consent Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (g) acknowledges that this Consent Agreement and attached Final Order, except for Respondent's Federal Tax Identification Number, will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;
- (h) acknowledges and consents that its tax identification number may be disclosed and used for collecting or reporting any delinquent monetary obligation arising from this Consent Agreement (see 31 U.S.C. § 7701);
- (i) certifies that the information it has supplied concerning this matter was at the time of submission true, accurate, and complete; and

- (j) acknowledges that there are significant penalties for knowingly submitting false, fictitious, or fraudulent information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

34. For purposes of this proceeding, the parties each agree that:

- (a) this Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;
- (b) this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement.
- (c) its undersigned representative is fully authorized by the Party whom he or she represents to bind that Party to this Consent Agreement and to execute it on behalf of that Party;
- (d) each Party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order; and
- (e) each party will bear their own costs and attorney fees in the action resolved by this Consent Agreement and attached Final Order.

35. Respondent agrees to pay to the United States a civil penalty of \$94,529 (the Civil Penalty). The EPA has reduced the civil penalty on the basis of information produced by Respondent demonstrating its inability to pay a higher civil penalty.
36. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
37. Respondent agrees to pay the Civil Penalty in the manner specified below:
 - (a) Pay the Civil Penalty using any method provided on the following website:
<http://www2.epa.gov/financial/additional-instructions-making-payments-epa>;
 - (b) Identify each and every payment with "Docket No. CAA-HQ-2018-8362"; and
 - (c) Within 24 hours of payment, email proof of payment to Edward Kulschinsky, Attorney-Adviser, at kulschinsky.edward@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with "Docket No. CAA-HQ-2018-8362").
38. As a condition of settlement, Respondent agrees to the following: By its signature to this Consent Agreement, Respondent certifies that from the date of its signature, it will not manufacture, sell, offer for sale, or install Aftermarket Defeat Devices, including Electronic Tuning Products, Replacement Pipes, or Delete Kits, in violation of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), as that statutory provision is applied by EPA consistent with the June 25, 1974, Mobile Source Enforcement

Memorandum No. 1A from the EPA Office of Enforcement and General Counsel, incorporated by reference here and included as Appendix C. Toward this end, Respondent agrees to comply with the Compliance Plan attached as Appendix B of this Consent Agreement.

Effect of Agreement and Attached Order

39. In accordance with 40 C.F.R. § 22.18(c), Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged above.
40. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following paragraph of this Consent Agreement, Respondent must timely pay the penalty.
41. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:
 - (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7524(c)(6);
 - (b) refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
 - (d) suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.
42. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).
43. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.
44. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
45. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent

Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

46. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
47. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

The foregoing Consent Agreement *In the Matter of Adrenaline Truck Performance, LLC*, Docket No. CAA-HQ-2018-8362, is Hereby Stipulated, Agreed, and Approved for Entry.

For Adrenaline Truck Performance, LLC:

[Redacted Signature]

Signature

2/12/2018
Date

Printed Name: [Redacted]

Title: [Redacted]

Address: [Redacted]

Respondent's Federal Tax Identification Number: [Redacted]

The foregoing Consent Agreement *In the Matter of Adrenaline Truck Performance, LLC*,
Docket No. CAA-HQ-2018-8362, is Hereby Stipulated, Agreed, and Approved for Entry.

For Complainant:

[Redacted Signature]

Philip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

2/27/2018
Date

[Redacted Signature]

Edward Kulschinsky, Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

2/12/2018
Date

Appendix A: Aftermarket Automotive Product List

Manufacturer	Part Number	Part Name
Adrenaline Truck Performance / EFI Live	various	Custom Tuning for Duramax / Cummins
	various	Autocal w/ Custom Tuning for Duramax / Cummins
AFE	AFE49-04012	DPF Race Pipe
	AFE49-04014	Aluminized CC/SB DPF Race Pipe
	AFE49-04015	Atlas Race Pipe W/out Bungs
	AFE49-04021	Atlas Down Pipe/Catalytic Race Pipe for 11-13 GM
	AFE49-04022	11+ LML DPR Race Pipe
	AFE49-12009-1	Large Bore HD 4" Turbo-Back Race Exhaust System
	AFE49-44019	Stainless Steel CC/SB DPF Race Pipe
	AFE49-44020	Mach Force XP Race Front Pipe Upgrade
	AFE49-44021	Mach Force XP DPF Race Pipe
	AFE49-44023	SS DPF Race EC/LB
	AFE49-44027	Mach Force XP DPF Race Pipe
	AFE49-44028	Mach Force XP Cat Race Front Pipe
	AFE49-44029-P	DPF Race Duramax 5" 409 SS Exhaust System
	AFE49-44033-P	Mach Force XP5" DPF Race Exhaust System
	AFE49-82009	Power DPF Race Exhaust Sensor Plugs
	AFE49-84017	Power DPF-Race Exhaust Sensor Plugs
	AFE46-90071	EGR race plates Cummins 07.5-08
Black Market Performance	BMP-1314EGR	EGR race kit
Deviant Race Parts	DRP75110	EGR Race 11+ LML
	DRP75120	EGR Delete & Up-Pipe Package Fits 11-15 LML
	DRP87110	EGR Race Kit For 09-11 Cummins 6.7L
	DRP87111	EGR Race Kit For 07-08 Cummins 6.7
	DRP93100	Stage 1 EGR Race Kit for 6.0L 2003-07 Ford
	DRP94120	Basic EGR Race Kit for 08-10 Ford 6.4L
Diamond Eye	DEM324102	DPF Race Pipe with Bungs
	DEM324106	DPF Race W/Bungs
	DEM324107	CC/LB Race Pipe
	DEM324108	DPF Race Pipe W/Bungs 07.5-10 Duramax
	DEM324112	LMM Cat Race
	DEMK4150S	4" S.S. Exhaust 07.5-10 Duramax CC/LB with Bungs
	DEMK4243A-RP	4" w/Bungs Exhaust 6.7
	DEMK5254A-RP	5" no muffler 07.5-up
Flo-Pro	FLP11112	DPF Race Pipe 2011-2015 Duramax EC-CC/SB-LB

Manufacturer	Part Number	Part Name
Flo-Pro (cont.)	FLP1636	2007.5-2009 5" Aluminized No Bungs with Muffler
	FLP1639	5" Exhaust 6.7 Cummins w/out Bungs w/out Muffler
	FLP1648	5" Aluminized Turbo Back Exhaust With Muffler
	FLP1649	5" Aluminized Turbo Back Exhaust Fits 2010-Up Dodge
	FLP1670	5" Aluminized Down Pipe Back Exhaust with Muffler f/ 13-14 Dodge
	FLP18113	2007.5-2010 D-Max Race Pipe W/Bungs CC/SB/AL.
	FLP18123	07-10 Duramax DPF Race Pipe EC
	FLP18133	Race Pipe With Bungs Fits 07.5-10 GM 6.6L Duramax LMM
	FLP18143	Race Pipe Extended Cab lb 07.5-10 Duramax
	FLP18153	Race Pipe With Bungs Fits 07.5-10 GM 6.6L Duramax LMM
	FLP18213	07.5-10 LMM Race Pipe CC/SB/NB
	FLP18233	DPF Race Pipe 2007.5-2010 LMM Duramax CC/LB No Bungs
	FLP18243	2007.5-2010 Extended Cab Long Box 4" Aluminized
	FLP18253	4" Race Pipe RC/LB/NB 07-10 Duramax
	FLP1836	4" Aluminized Exhaust W/Muffler W/out Bungs No Tip 07.5-09
	FLP1839	4" Turbo Back Exhaust for 07.5-09 Dodge
	FLP1848	4" Aluminized Turbo Back Exhaust Fits 2010-Up Dodge
	FLP1869	4" Aluminized Down Pipe Back Exhaust w/o Muffler for 13-14
	FLP1870	4" Aluminized Exhaust Dodge Cummins 2013-2014
	FLP21122	DPF/Cat Race Pipe w/o Muffler 2011+ Cummins C&C 6.7L
	FLP21125	SCR Race Pipe 2011+ Cummins C&C 6.7L
	FLP27113	4" Aluminized Race Pipe With Bungs Fits 07.5-10 Dodge
	FLP27113NB	4" Race Pipe for Dodge 6.7L Cummins 07.5-10 No Bungs
	FLP27123	07.5-10 6.7 Cummins Cab & Chassis Race Pipe No Bungs
	FLP48213	Race Pipe CC/SB
	FLP48223	Race Pipe for LMM ECSB
	FLP48243	Stainless DPF Race Pipe Fits 07-10 6.6L
	FLP57113	Stainless Race Pipe with Bungs Fits 07-10 Cummins
	FLP57113NB	Stainless Race Pipes No Bungs Fits 07-10 Cummins
	FLP632NB	5" Aluminized Exhaust 08-10 6.4 NB w/ Muffler
	FLP633NB	5" NM/NB Ex. All Cab All Bed 08-10 6.4L Powerstroke
	FLP634NM	5" Turbo Back LMM
	FLP636	5" WITH Muffler 07.5-09 Cummins
	FLP638	5" TurboBack NM 08-10 Ford 6.4 ec-cc/sb-lb
FLP639	5" Aluminized Turbo Back No Muffler Fits 07.5-09 Dodge	

Manufacturer	Part Number	Part Name
Flo-Pro (cont.)	FLP643	5" Aluminized Turbo Back with Muffler Fits 08-10 Ford
	FLP648	5" Aluminized Turbo Back Exhaust Fits 2010 Dodge 6.7L
	FLP652NB	5" Downpipe Back Exhaust for 2011 Ford 6.7L w/ Muffler
	FLP653NB	5" Exhaust No Muffler No Tip 11-14 6.7 PSD
	FLP664	5" Exhaust for 2011+ LML w/ Muffler
	FLP664NM	5" Aluminized Down Pipe Back Exhaust w/out Muffler
	FLP68113	Stainless 3-1/2" Race Pipe Fits 08-10 Ford F250/F350
	FLP738	Turbo Back Dual Offroad No Muffler 08-10 Ford 6.4L
	FLP739	4" Turbo Back Duals 07.5-09 Cummins 6.7L QC/SB-LB-Dually
	FLP832	4" Exhaust 08-10 PSD W/ Muffler w/ Bungs
	FLP832NB	4" Down Pipe Back Exhaust w/muffler no bungs for 08-10
	FLP833	4" Down Pipe Back Exhaust No Muffler, w/ Bungs 08-10 6.4 PSD
	FLP833NB	4" Aluminized Downpipe Back, No Muffler, No Bungs 08-10
	FLP835	4" Turbo Down Pipe Kit 2007.5-2012 6.7L Dodge Cummins
	FLP835NB	4" Aluminized CAT and Race Kit NO BUNGS Fits 07.5-12
	FLP837	4" 6.4L Race Pipe
	FLP837NB	4" Race Pipe 08-10 6.4L PSD No Bungs Aluminized
	FLP838	2008-2010, 6.4L, F250/F350, Auto Only, Race Exhaust No Muff
	FLP839	4" Aluminized 2007.5-2009 6.7L Cummins No Muffler
	FLP843	Aluminized Turbo Back w/ Muffler 08-10 6.4L
	FLP846	4" Down Pipe Aluminized Ball/Socket Style 08-10 6.4L PSD
	FLP852NB	4" Down Pipe Back Alum Exhaust 11-14 6.7 PSD w/ Muff
	FLP853NB	4" Down Pipe Back exhaust system for 11-15 6.7 PSD
	FLP857NB	Race Pipe W/out Bungs for 11-12 6.7 PSD
	FLP862	Aluminized 4" Race Kit for 2011-2015 Duramax EC-CC/SB-LB
	FLP864	4" Aluminized Down Pipe Back With Muffler Exhaust
	FLP864NM	4" Aluminized No Muffler No Tip LML
	FLPSS1636	5" Turbo Back Offroad NO BUNGS 07.5-09 Dodge 6.7L (T409 SS)
	FLPSS1648	5" Turbo Back Offroad NO BUNGS 2010-2012 Cummins
	FLPSS1836	4" Turbo Back Offroad NO BUNGS 07.5-09 Cummins
	FLPSS1848	4" Stainless Turbo Back Exhaust Fits 2010-2012 Dodge
	FLPSS634	5" Stainless Turbo Back Fits 07-10 Duramax 6.6L LMM
	FLPSS634NM	Stainless Steel Exhaust System w/o Muffler 07-10

Manufacturer	Part Number	Part Name
Flo-Pro (cont.)	FLPSS644	5" Turbo Back No Muffler 07.5-08 Dodge Cummins C&C
	FLPSS664	5" Stainless Steel Down Pipe Back Exhaust Fits 11-15
	FLPSS832NB	4" Stainless Down Pipe Back Fits 08-10 Ford PSD
	FLPSS834	4" Turbo Back Stainless Steel WITH Muffler for 07.5-10
	FLPSS835	4" Turbo Down Pipe Race Kit With Bungs Fits 07-10 Dodge
	FLPSS835NB	4" Turbo Down Pipe Race Kit No Bungs Fits 07-12
	FLPSS836	Stainless 4" Turbo Back Single With Bungs Fits 07-09 Dodge
	FLPSS857NB	Stainless 4" Race Pipe No Bungs Fits 2011 PSD
	FLPSS862	For Off-Road Use Only 2011-2015 Stainless Race Pipe
	FLPSS864	4" SS Exhaust 2011-2013 Duramax
	FLPSS871NM	4" Stainless Steel Exhaust 2015.5 Duramax
	FLPEGR60	EGR Race Kit for 03-07 Ford 6.0
	H & S	H&S109005
HAS109003		MiniMax Tuner 109003
HAS109006		XRT Pro
HAS119003		MiniMax w/ Pyrometer 07.5-11 Dodge 5.7L Cummins
H&S301002		2007.5-2012 Dodge 6.7 EGR Race Kit
JST	EGR LBZ Race Plate	EGR LBZ Race Plate
	EGR LLY/LB7	EGR LLY/LB7 Race Plate
	EGR LMM Race Plate	EGR LMM Race Plate
MBRP	MBR6046AL	4" Dual Installer Series Downpipe-Back Comp 2011-2012
	MBRC6044P	4" exhaust 2012 Duramax
	MBRCDAL437	DPF Race Pipe W/O Bungs For 2007.5-12 Cummins
ProFab	PRFDMLBZCAP	EGR Riser Cap for 06-07 LBZ Duramax
	PRFDMLBZDT	LBZ / LMM EGR Race Tube
	PRFDMLLYCAP	EGR Riser Cap - LLY
	PRFDMLLYEGRRP	LLY EGR Race Pipe
	PRFDMLMMCAP	LMM EGR Cap
RaceME	RME-07 Product#1	RME-07 2007.5-2009- Cummins
	RME-10 Product#4	RME-10 2010-2011 - Cummins
	RME-12 Product#5	RME-12 2012 Cummins
	RMEP-10 Product#3	RMEP-10 2010-2012 - Cummins
	RMEU-07-15 ULTRA	Off Road tuning for 2007.5-2015 Dodge
SDP	SDPEGR0608LBZLMM	EGR Race Kit for 06-08 Duramax
	SDPEGR0910LMM	EGR Race Kit for LMM 09+
	SDPEGRLLY	EGR Race Kit for LLY 04.5-05
	SDPLMLRACEKIT	LML Race Kit

Manufacturer	Part Number	Part Name
Sinister Diesel	SINSD-EGRD-6.7P-NPT	EGR Race Kit 2011-2012 6.7L PSD NOT ok w/ Fact Probe
	SINSD-EGRD-6.0	EGR Race Kit 03-07 6.0L PSD
	SINSD-EGRD-6.0B	Basic EGR Race Kit 03-07 6.0 PSD
	SINSD-EGRD-6.4	EGR Valve and Cooler Race 08-10 PSD
	SINSD-EGRD-6.7C-07	EGR Race Kit 07.5-08
	SINSD-EGRD-6.7C-10	EGR Race Kit 10-12
	SINSD-EGRD-6.7P-FP	EGR Race Kit 11-14 PSD
	SINSD-EGRD-LBZ	2006-2007 EGR Race Kit
	SINSD-EGRD-LBZ-IE	Race Kit w/ Intake Elbow 06-07
	SINSD-EGRD-LLY	EGR Race Kit - LLY
	SINSD-EGRD-LLY-IE	LLY EGR Race Kit w/ Intake Elbow
	SINSD-EGRD-LMM	EGR Valve/Cooler Race Kit
	SINSD-EGRD-LMM-IE	EGR Race Kit for LMM w/ Intake Elbow
	Smarty	Smarty- J-67US

Appendix B:

Compliance Plan to Avoid Illegal Tampering and Aftermarket Defeat Devices

This document explains how to help ensure compliance with the Clean Air Act's prohibitions on tampering and aftermarket defeat devices. The document specifies what the law prohibits, and sets forth two principles to follow in order to prevent violations.

The Clean Air Act Prohibitions on Tampering and Aftermarket Defeat Devices

The Act's prohibitions against tampering and aftermarket defeat devices are set forth in section 203(a)(3) of the Act, 42 U.S.C. § 7522(a)(3), (hereafter "§ 203(a)(3)"). The prohibitions apply to all vehicles, engines, and equipment subject to the certification requirements under sections 206 and 213 of the Act. This includes all motor vehicles (e.g., light-duty vehicles, highway motorcycles, heavy-duty trucks), motor vehicle engines (e.g., heavy-duty truck engines), nonroad vehicles (e.g., all-terrain vehicles, off road motorcycles), and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions (e.g., oxides of nitrogen, carbon monoxide, hydrocarbons, particulate matter, greenhouse gases), evaporative emissions (e.g., emissions from the fuel system), and onboard diagnostic systems.

The prohibitions are as follows:

"The following acts and the causing thereof are prohibited—"

Tampering: CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R.

§ 1068.101(b)(1): "for any person to remove or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser;"

Defeat Devices: CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R.

§ 1068.101(b)(2): "for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any [vehicle, engine, or piece of equipment], where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a [vehicle, engine, or piece of equipment] in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use."

Section 203(a)(3)(A) prohibits tampering with emission controls. This includes those controls that are in the engine (e.g., fuel injection, exhaust gas recirculation), and those that are in the

exhaust (e.g., filters, catalytic convertors, and oxygen sensors). Section 203(a)(3)(B) prohibits (among other things) aftermarket defeat devices, including hardware (e.g., certain modified exhaust pipes) and software (e.g., certain engine tuners and other software changes).

The EPA's longstanding view is that conduct that may be prohibited by § 203(a)(3) does not warrant enforcement if the person performing that conduct has a documented, reasonable basis for knowing that the conduct does not adversely affect emissions. *See* Mobile Source Enforcement Memorandum 1A (June 25, 1974).

The EPA evaluates each case independently, and the absence of such reasonable basis does not in and of itself constitute a violation. When determining whether tampering occurred, the EPA typically compares the vehicle after the service to the vehicle's original, or "stock" configuration (rather than to the vehicle prior to the service). Where a person is asked to perform service on an element of an emission control system that has already been tampered, the EPA typically does not consider the service to be illegal tampering if the person either declines to perform the service on the tampered system or restores the element to its certified configuration.

Below are two guiding principles to help ensure Respondent commits no violations of the Act's prohibitions on tampering and aftermarket defeat devices.

Principle 1: Respondent Will Not Modify any OBD System

Respondent will neither remove nor render inoperative any element of design of an OBD system.ⁱ Also, Respondent will not manufacture, sell, offer for sale, or install any part or component that bypasses, defeats, or renders inoperative any element of design of an OBD system.

Principle 2: Respondent Will Ensure There is a *Reasonable Basis* for Conduct Subject to the Prohibitions

For conduct unrelated to OBD systems, Respondent will have a *reasonable basis* demonstrating that its conductⁱⁱ does not adversely affect emissions. Where the conduct in question is the manufacturing or sale of a part or component, Respondent must have a *reasonable basis* that the installation and use of that part or component does not adversely affect emissions. Respondent will fully document its *reasonable basis*, as specified in the following section, at or before the time the conduct occurs.

Reasonable Bases

This section specifies several ways that Respondent may document that it has a "reasonable basis" as the term is used in the prior section. In any given case, Respondent must consider all the facts including any unique circumstances and ensure that its conduct does not have any adverse effect on emissions.ⁱⁱⁱ

- A. Identical to Certified Configuration:** Respondent generally has a reasonable basis if its conduct: is solely for the maintenance, repair, rebuild, or replacement of an emissions-related element of design; and restores that element of design to be identical to the certified configuration (or, if not certified, the original configuration) of the vehicle, engine, or piece of equipment.^{iv}
- B. Replacement After-Treatment Systems:** Respondent generally has a reasonable basis if the conduct:
- (1) involves a new after-treatment system used to replace the same kind of system on a vehicle, engine or piece of equipment and that system is beyond its emissions warranty; and
 - (2) the manufacturer of that system represents in writing that it is appropriate to install the system on the specific vehicle, engine or piece of equipment at issue.
- C. Emissions Testing:**^v Respondent generally has a reasonable basis if the conduct:
- (1) alters a vehicle, engine, or piece of equipment;
 - (2) emissions testing shows that the altered vehicle, engine, or piece of equipment will meet all applicable emissions standards for its full useful life; and
 - (3) where the conduct includes the manufacture, sale, or offering for sale of a part or component, that part or component is marketed only for those vehicles, engines, or pieces of equipment that are appropriately represented by the emissions testing.
- D. EPA Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the EPA under 40 C.F.R. Part 85 Subpart V (or any other applicable EPA certification program).^{vi}
- E. CARB Certification:** Respondent generally has a reasonable basis if the emissions-related element of design that is the object of the conduct (or the conduct itself) has been certified by the California Air Resources Board (“CARB”).^{vii}

ENDNOTES

ⁱ *OBD system* includes any system which monitors emission-related elements of design, or that assists repair technicians in diagnosing and fixing problems with emission-related elements of design. If a problem is detected, an OBD system should record a diagnostic trouble code, illuminate a malfunction indicator light or other warning lamp on the vehicle instrument panel, and provide information to the engine control unit such as information that induces engine derate (as provided by the OEM) due to malfunctioning or missing emission-related systems. Regardless of whether an element of design is commonly considered part of an OBD system, the term “OBD system” as used in this Appendix includes any element of design that monitors, measures, receives, reads, stores, reports, processes or

transmits any information about the condition of or the performance of an emission control system or any component thereof.

¹¹ Here, the term *conduct* means: all service performed on, and any change whatsoever to, any emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3); the manufacturing, sale, offering for sale, and installation of any part or component that may alter in any way an emissions-related element of design of a vehicle, engine, or piece of equipment within the scope of § 203(a)(3), and any other act that may be prohibited by § 203(a)(3).

¹² General notes concerning the Reasonable Bases: Documentation of the above-described reasonable bases must be provided to EPA upon request, based on the EPA's authority to require information to determine compliance. CAA § 208, 42 U.S.C. § 7542. The EPA issues no case-by-case pre-approvals of reasonable bases, nor exemptions to the Act's prohibitions on tampering and aftermarket defeat devices (except where such an exemption is available by regulation). A reasonable basis consistent with this Appendix does not constitute a certification, accreditation, approval, or any other type of endorsement by EPA (except in cases where an EPA Certification itself constitutes the reasonable basis). No claims of any kind, such as "Approved [or certified] by the Environmental Protection Agency," may be made on the basis of the reasonable bases described in this Policy. This includes written and oral advertisements and other communication. However, if true on the basis of this Appendix, statements such as the following may be made: "Meets the emissions control criteria in the United States Environmental Protection Agency's Tampering Policy in order to avoid liability for violations of the Clean Air Act." There is no reasonable basis where documentation is fraudulent or materially incorrect, or where emissions testing was performed incorrectly.

¹³ Notes on Reasonable Basis A: The conduct should be performed according to instructions from the original manufacturer (OEM) of the vehicle, engine, or equipment. The "certified configuration" of a vehicle, engine, or piece of equipment is the design for which the EPA has issued a certificate of conformity (regardless of whether that design is publicly available). Generally, the OEM submits an application for certification that details the designs of each product it proposes to manufacture prior to production. The EPA then "certifies" each acceptable design for use, in the upcoming model year. The "original configuration" means the design of the emissions-related elements of design to which the OEM manufactured the product. The appropriate source for technical information regarding the certified or original configuration of a product is the product's OEM. In the case of a replacement part, the part manufacturer should represent in writing that the replacement part will perform identically with respect to emissions control as the replaced part, and should be able to support the representation with either: (a) documentation that the replacement part is identical to the replaced part (including engineering drawings or similar showing identical dimensions, materials, and design), or (b) test results from emissions testing of the replacement part. In the case of engine switching, installation of an engine into a different vehicle or piece of equipment by any person would be considered tampering unless the resulting vehicle or piece of equipment is (a) in the same product category (e.g., light-duty vehicle) as the engine originally powered and (b) identical (with regard to all emissions-related elements of design) to a certified configuration of the same or newer model year as the vehicle chassis or equipment. Alternatively, Respondent may show through emissions testing that there is a reasonable basis for an engine switch under Reasonable Basis C. Note that there are some substantial practical limitations to switching engines. Vehicle chassis and engine designs of one vehicle manufacturer are very distinct from those of another, such that it is generally not possible to put an engine into a chassis of a different manufacturer and have it match up to a certified configuration.

¹⁴ Notes on emissions testing: Where the above-described reasonable bases involve emissions testing, unless otherwise noted, that testing must be consistent with the following. The emissions testing may be performed by someone other than the person performing the conduct (such as an aftermarket parts manufacturer), but to be consistent with this Appendix, the person performing the conduct must have all documentation of the reasonable basis at or before the conduct. The emissions testing and documentation required for this reasonable basis is the same as the testing and documentation required by regulation (e.g., 40 C.F.R. Part 1065) for the purposes of original EPA certification of the vehicle, engine, or equipment at issue. Accelerated aging techniques and in-use testing are acceptable only insofar as they are acceptable for purposes of original EPA certification. The applicable emissions standards are either the emissions standards on the Emission Control Information Label on the product (such as any stated family emission limit, or FEL), or if there is no such label, the fleet standards for the product category and model year. To select test vehicles or test engines where EPA regulations do not otherwise prescribe how to do so

for purposes of original EPA certification of the vehicle, engine, or equipment at issue, one must choose the “worst case” product from among all the products for which the part or component is intended. EPA generally considers “worst case” to be that product with the largest engine displacement within the highest test weight class. The vehicle, engine, or equipment, as altered by the conduct, must perform identically both on and off the test(s), and can have no element of design that is not substantially included in the test(s).

^{vi} Notes on Reasonable Basis D: This reasonable basis is subject to the same terms and limitations as EPA issues with any such certification. In the case of an aftermarket part or component, there can be a reasonable basis only if: the part or component is manufactured, sold, offered for sale, or installed on the vehicle, engine, or equipment for which it is certified; according to manufacturer instructions; and is not altered or customized, and remains identical to the certified part or component.

^{vii} Notes on Reasonable Basis E: This reasonable basis is subject to the same terms and limitations as CARB imposes with any such certification. The conduct must be legal in California under California law. However, in the case of an aftermarket part or component, the EPA will consider certification from CARB to be relevant even where the certification for that part or component is no longer in effect due solely to passage of time.

Appendix C

Mobile Source Enforcement Memorandum No. 1A: Interim Tampering Enforcement Policy (June 25, 1974)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Enforcement and General Counsel

June 25, 1974

Mobile Source Enforcement Memorandum No. 1A

SUBJECT: Interim Tampering Enforcement Policy

A. Purpose

The purpose of this Memorandum is to state the interim policy of EPA with regard to enforcement of the "tampering" prohibition-- Section 203(a)(3)--of the Clean Air Act. This Memorandum cancels and supersedes Mobile Source Enforcement Memorandum No. 1 of December 22, 1972.

1. Section 203(a)(3) of the Clean Air Act provides:

"The following acts and the causing thereof are prohibited--

(3) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."

Section 205 of the Act provides for a maximum civil penalty of \$10,000 for any person who violates Section 203(a)(3).

2. This "tampering" provision of the law has created a great deal of uncertainty, primarily among new vehicle dealers and automotive aftermarket parts manufacturers, regarding what actions and/or use of what parts are prohibited. The terms "manufacturer" and "dealer" in 203(a)(3) refer only to motor vehicle and engine manufacturers and new motor vehicle dealers; however, the law impacts indirectly on aftermarket parts manufacturers through its applicability to vehicle dealers who are customers for their products. Other provisions in the Act establishing manufacturer warranties and authorizing compulsory recall of properly maintained vehicles also have a potential for anti-competitive effects in the aftermarket.

3. In general, it is clear that EPA's primary objective in enforcing the statutory prohibition on "tampering" must be to assure unimpaired emission control of motor vehicles throughout their useful life. It is EPA's policy to attempt to achieve this objective without imposing unnecessary restraints on commerce in the automotive aftermarket.

4. The long range solution to minimizing possible anti-competitive effects that could result from implementation of these statutory provisions may lie in some type of certification program for at least certain categories of aftermarket parts. EPA is currently studying the technical, administrative and legal problems which such a program presents. EPA has yet to develop the policy, procedures, or facilities attendant to any long range solution.

5. In the absence of a long-term solution, and in the absence of proof that use of nonoriginal equipment parts will adversely affect emissions, constraining dealers to the use of only original equipment parts would constitute an unwarranted burden on commerce in the automotive aftermarket. Pending development of a long range solution, the following statement reflects EPA's interim policy in the tampering area. This policy is intended to reduce the uncertainty which dealers now face by providing criteria by which dealers can determine in advance that certain of their acts do not constitute tampering.

6. New vehicle and engine manufacturers have also requested that they be treated, in their aftermarket parts role, similarly to other aftermarket parts manufacturers. Memorandum No. 1 was intended to avoid unnecessary adverse impacts on all aftermarket manufacturers; this revision, therefore, makes it clear that EPA's interim policy extends to vehicle and engine manufacturers

B. Interim Policy

1. Unless and until otherwise stated, the Environmental Protection Agency will not regard the following acts, when performed by a dealer, to constitute violations of Section 203 (a) (3) of the Act:

- (a) Use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part solely for purposes of maintenance according to the vehicle or engine manufacturer's instructions, or for repair or replacement of a defective or worn out part, if the dealer has a reasonable basis for knowing that such use will not adversely affect emissions performance; and

- (b) Use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, if the dealer has a reasonable basis for knowing that such use will not adversely affect emissions performance; and
- (c) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, or if the dealer has a reasonable basis for knowing that such adjustment or alteration will not adversely affect emissions performance.

2. For purposes of clause (1a), a reasonable basis for knowing that a given act will not adversely affect emissions performance exists if:

- (a) the dealer reasonably believes that the replacement part or rebuilt part is designed to perform the same function with respect to emission control as the replaced part, or
- (b) the replacement part or rebuilt part is represented in writing by the part manufacturer to perform the same function with respect to emission control as the replaced part.

3. For purposes of clauses (1b) and (1c), a reasonable basis for knowing that a given act will not adversely affect emissions performance exists if:

- (a) the dealer knows of emissions tests which have been performed according to testing procedures prescribed in 40 CFR 85 showing that the act does not cause similar vehicles or engines to fail to meet applicable emission standards for their useful lives (5 years or 50,000 miles in the case of light duty vehicles); or
- (b) the part or system manufacturer represents in writing that tests as described in (a) have been performed with similar results; or

(c) a Federal, State or local environmental control agency expressly represents that a reasonable basis exists. (This provision is limited to the geographic area over which the State or local agency has jurisdiction).

4. For purposes of clauses (1a), (1b), and (1c):

- (a) except when necessarily done in conjunction with acts under 1(b) or 1(c) which EPA does not consider to constitute violations of §203(a)(3), the permanent removal or disconnecting or blocking of any part of the original system installed primarily for the purpose of controlling emissions will be presumed to affect adversely emission performance; and
- (b) the proscription and appropriate publication by EPA of an act as prohibited will be deemed conclusive that such act will adversely affect emissions performance.

C. Discussion

1. Clause (1a) will apply to new or rebuilt replacement parts, protecting the dealer when he uses such a part to conduct necessary maintenance if a person familiar with the design and function of motor vehicles and engines would reasonably believe that such a part is designed to perform the same function as the replaced part, or if there is written representation by the parts manufacturer that the part is so designed. Other reasonable bases (e.g., emissions test showing no adverse effect) may exist, but these other bases will probably not occur often in the replacement part context. If EPA gains information that certain replacement parts do adversely affect emissions, a listing of such parts will be published.


2. Clause (1b) will protect the dealer who installs add-on parts if he knows, or if it has been represented in writing to him by the part manufacturer, that emissions tests have been performed according to Federal procedures which show that such a part will not cause similar vehicles to fail to meet applicable emission standards over the useful life of the vehicle. The dealer is protected from prosecution even if the test results have not been reported to EPA. However, the aftermarket parts manufacturer who represents that such tests have been conducted should have available the data from the tests, including where, when, how and by whom the tests were conducted should EPA

request it. Such add-on parts might be auxiliary fuel tanks, which would require evaporative emission control on light duty vehicles to the prescribed standard, or superchargers, which would require emission testing showing conformance to standards over the useful life of the vehicle or engine. Clause (1b) will also protect the dealer who installs retrofit devices to reduce emissions at the request of a State or local environmental control agency.

3. Clause (1c) applies to dealers performing necessary adjustments or alterations, according to the vehicle or engine manufacturer's instructions, of parts already on the vehicle or engine, e.g., adjustment of the carburetor or ignition timing. It also covers adjustments or alterations, as in the case of altitude "fixes", if a "reasonable basis" exists as described above.

4. This interim policy provides general guidance to dealers as to those acts which do not constitute tampering and those acts which may constitute tampering. It also allows aftermarket parts manufacturers an opportunity to protect their markets by providing dealers with assurance that their parts do not cause emissions standards to be exceeded. Vehicle and engine manufacturers also often function as aftermarket parts manufacturers. For example, many vehicle and engine manufacturers provide aftermarket parts for the in-use vehicle and engines of other manufacturers as well as for their own in-use vehicles and engines. In their aftermarket parts role, vehicle and engine manufacturers may take the same steps (set forth in this Memorandum) as parts manufacturers who are not also vehicle or engine manufacturers to provide dealers with assurance that they are not violating §203(a)(3). However, in their role as vehicle or engine manufacturers, procedures exist whereby they may obtain approval for any emission related change in a vehicle or engine from its certified configuration or parameters (See MSAPC Advisory Circulars No. 2-B "Field Fixes Related to Emission Control-Related Components" and No. 16-2 "Approval of Emission Control Modifications for High Altitude on New Light Duty Motor Vehicles", March 5, 1974). This Memorandum does not relieve vehicle or engine manufacturers from complying with the procedures set forth in the advisory circulars except in their specific function as aftermarket parts manufacturers.

5. Any questions regarding this interim policy should be addressed to the Mobile Source Enforcement Division (EG-340), Office of Enforcement and General Counsel.


Norman D. Shutler, Director
Mobile Source Enforcement Division
Office of Enforcement and General Counsel