

TIMELY GUIDANCE ON GOVERNMENT REGULATION OF EMISSIONS-RELATED AFTERMARKET PARTS

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■ When a product has been shown to be compliant, California Air Resources Board issues the product an Executive Order (EO). An EO indicates that a manufacturer's product is proven to not increase the emissions of the vehicle on which it is intended to be installed.

If you manufacture emissions-related aftermarket parts for highway vehicles, those parts will likely need to be tested to confirm that vehicles still meet applicable clean-air standards after the parts have been installed. Here is what you need to know:

What are “emissions-related aftermarket parts?” We are referring to any specialty part that interacts with the vehicle's emissions system. They are commonly called “add-on” or “modified” parts. The product may be emissions-related if it is installed anywhere between the air intake and the outlet end of the catalytic converter. We are *not* talking about ordinary replacement parts.

Why do the parts need to be tested? Under both California and federal law, it is illegal to knowingly market a product

that takes a highway vehicle out of compliance. “I didn't know” is not a legal defense. Rather, when federal government officials inquire, they expect you to demonstrate that the vehicle remains compliant after the part has been installed. The easiest means of doing so is to receive an Executive Order (EO) from the California Air Resources Board (CARB) to cover your products. This EO effectively allows legal sale and use of the product in all 50 states.

What is the CARB EO test procedure?

The details are outlined below, but here is a quick overview of the EO test process: The product is to be tested on a worst-case vehicle configuration. If the product can be installed on many different vehicles, CARB may require that it be tested on more than one vehicle. If the test results demonstrate that the vehicle remains compliant, the part will be issued a CARB EO number to be placed on the part, packaging and marketing materials.

What happens if I don't test and receive an EO for my product? Nothing—at first. Rather, potential liability hangs over your head. At some point, a regulator may knock at your door and ask to see the EOs for products you manufacture and sell. That's when you are at risk of civil penalties (and potential criminal penalties, if the violation was blatant).

Do I need to test the product twice, for California and federal authorities? No, you just need to perform the California test, because it applies in all 50 states.

What if I don't sell in California—can I claim that the part is 49-state legal? The “49-state legal disclaimer” is meaningless. Same with the term “for off-road use only” if the part can be installed on a highway vehicle. If EPA officials investigate, they will want to see your CARB EO number.

Does the testing issue only apply to manufacturers? No. These requirements apply to everyone in the supply chain: the distributor, retailer, installer, etc. It is illegal to market a noncompliant product. If the manufacturer's product has an EO number, downstream companies in the supply chain can rely on that number as

having demonstrated that the product is legal for sale.

How is compliance being enforced?

Both CARB and the EPA have enforcement staff who search for noncompliant products. Since they can't police the entire marketplace, enforcement can be selective. It may also come in different forms. Enforcement officials may appear at a manufacturing or distribution facility unannounced and request information. Alternatively, they may monitor websites and advertisements and send an investigation letter in the mail.

How do I respond to an enforcement investigation? SEMA recommends that you work with an attorney to respond. SEMA staff is available to assist member companies in understanding the investigative process and connecting you with an attorney, if that is necessary.

Where do I find more information about CARB's EO program? SEMA has compiled a comprehensive Black Book to guide the industry on the process for securing an EO. It walks through the procedures for obtaining an EO step by step. The Black Book also includes questions/answers for retailers, certification guidelines for diesel performance parts manufacturers, and a list of independent test laboratories. For more information, visit www.sema.org/black-book.

How do I obtain an EO? There are test laboratories around the country, including one at SEMA's headquarters in Diamond Bar, California. The SEMA Garage is a one-stop shop for product testing and receiving assistance in submitting an EO application for CARB review and approval. SEMA has experts and resources available to help members navigate the process at an affordable cost. Visit www.semagarage.com.

Additional Background Information

Emissions-related aftermarket parts for street vehicles are regulated under our nation's clean-air laws and are primarily enforced by two government agencies: CARB and the EPA. Since California enacted its own clean-air law several years before the federal Clean Air Act, Congress granted it the right to establish stricter emissions standards than under federal law. Many other states have adopted those

tougher CARB standards.

Enforcement agencies are primarily concerned that emissions-related parts can take a motor vehicle out of compliance with clean-air laws ("tampering" devices). Any part that potentially affects vehicle emissions is subject to anti-tampering law, including parts ranging from engine components to air filters, ECU programmers, and exhaust systems.

Under the law, when a company is marketing an emissions-related product for a street-driven vehicle, it is presumed to have received the required EOs for such products so that the vehicle will remain emissions compliant when the part intended for that vehicle is installed. CARB and EPA authority for requiring emissions compliance is based on the anti-tampering provisions of the U.S. Clean Air Act and the California Vehicle Code as follows:

U.S. EPA's Anti-Tampering Provision: EPA Memo 1A was issued in 1974 and identifies modifications that constitute illegal tampering. Only parts that demonstrate emissions compliance are legal for use. To date, the only practical means of demonstrating emissions compliance is the receipt of EOs from CARB. Memo 1A enforces the Clean Air Act's Section 203(a)(3)(B) [42 U.S.C. §7522(a)(3)(B)] anti-tampering prohibition of manufacturing or selling, or offering to sell or install, a part for a motor vehicle, where:

- A principle effect of the part or component is to bypass, defeat or render inoperative any emission control device, and
- 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.

California's Anti-Tampering Provision: Section 27156 of the California Vehicle Code prohibits the marketing or use of uncertified vehicles and devices. Subsection (c) specifically applies to aftermarket parts:

(c) No person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system.

The only means of demonstrating that there has been no such alteration or modification of the emission control device or system is to receive a CARB EO for such products.

Demonstrating Compliance With California and Federal Law

When a product has been shown to be compliant, CARB issues the product an EO. An EO indicates that a manufacturer's product is proven to meet the emissions requirements of the vehicle on which it is intended to be installed. Every EO is assigned a number that must be affixed to the product and referenced in packaging and advertising materials.

Under Memo 1A, manufacturers must have a "reasonable basis" for concluding that their installed products do not adversely affect emissions. The EPA recognizes a CARB EO as sufficient for meeting those requirements. Therefore, an EO is the most direct approach for the industry to demonstrate compliance with federal and California law and thereby demonstrate that the part is 50-state compliant.

Aftermarket Emissions-Related Compliance

Emissions compliance is required for almost all aftermarket performance and engine products. Generally, any product that affects air flow into or out of the engine, impacts the containment or delivery of fuel, or affects the functionality of an emissions control system or device requires a CARB EO for that product to be legal for street use. Products requiring EOs include, but are not limited to, intake systems, exhaust components, tuning products, turbos and other superchargers.

Replacement, Add-On or Modified Parts

CARB and EPA distinguish between replacement parts and add-on or modified parts. Replacement parts are "functionally identical" to the original equipment manufacturer (OEM) parts they replace. They are tested and certified in a similar fashion to the OEM equipment. Replacement part product categories include (but are not limited to) air cleaners, camshafts,



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carburetors, catalytic converters, coils and ignition wires, evaporative emissions canisters, ignition components, distributors,

fuel injection, fuel tanks, heads, head-ers, intake manifolds, replacement internal engine parts and transmissions.

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An add-on or modified part is an item that modifies the performance levels of the equipment being replaced or supplemented. Those products require an EO to determine their impact on the intended vehicle’s emissions performance. Generically speaking, it would apply to any product installed within the fuel/emissions system—from the air intake to the end of the catalytic converter. CARB has compiled a comprehensive product category list at www.arb.ca.gov/msprog/aftermkt/devices/amquery.php.

CARB and EPA Enforcement

Both CARB and the EPA have the power to enforce environmental laws. Each

can impose fines against manufacturers, sellers, installers and users of products that do not comply with clean-air laws. Fines are generally determined based on the number of noncompliant products that have been sold. Recent agency activities have subjected warehouse distributors, jobbers and some retail outlets to investigations and fines, based on the extent of their violations. In fact, distributors and retailers may be easier targets, since they are visibly marketing a variety of products and may not be as knowledgeable as the manufacturer about EOs and certification obligations.

Responding to an Enforcement Action

CARB or EPA officials investigating compliance may appear unannounced at your facility or may send you a letter asking for information. As a rule, both CARB and the EPA will indicate a specific timetable for a company to supply requested information. The agencies typically identify those products believed to be in violation of compliance rules and request data on the quantities of products sold and the time

over which such sales occurred.

SEMA recommends that you consult with an attorney if there is an enforcement action. SEMA staff is available to assist member companies in understanding the investigative process—before and after an inquiry begins—and identifying products or systems being marketed that may be problematic to CARB and the EPA. For additional information, you may contact SEMA Technical Consultant Jim McFarland, at jmcfar1@aol.com.

How to Avoid Potential Enforcement in the Future

SEMA believes that it is prudent to secure a CARB EO for any regulated product, with an application being filed before the product is marketed.

Race Vehicles

Vehicles and equipment used solely for competition (race vehicles) are not regulated by CARB or the EPA. However, there has been a dispute with the EPA since 2015 on how the Clean Air Act is interpreted. The EPA contends that a

street vehicle is still subject to regulation even after having been converted into a dedicated race vehicle and that only purpose-built race vehicles are exempt. SEMA is seeking passage of the Recognizing the Protection of Motorsports (RPM) Act (H.R. 350, S. 203) to ensure that converted vehicles and parts installed on the vehicles are exempt from regulation. California recognizes the exemption and directs companies to mark products “for racing use only” or by using some similar designation.

Conclusion

In light of the stepped-up enforcement from the EPA and CARB against emissions-related aftermarket parts, obtaining a CARB EO is increasingly necessary. SEMA is here to provide the information resources and guidance needed to help companies navigate the EO process and the changing regulatory landscape for emissions-related products. Further, the SEMA Garage is available for product testing and helping to submit an EO application to CARB. For more information, visit www.semagarage.com. 📄