



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable Jack Reed
U.S. Senate
Washington, D.C. 20510

Dear Senator Reed:

Thank you for your letter of December 11, 2019, to the U.S. Environmental Protection Agency concerning the Clean Air Act (Act or CAA) and converting motor vehicles into vehicles used for competition motorsports. You requested information on this issue including the applicable law.

The EPA has the twin goals of letting racers race while also keeping tampered, high-polluting vehicles off our streets and highways. Dedicated competition-use only vehicles should be able to operate as they historically have. At the same time, the EPA must retain the ability to prevent the manufacturing, sale, and installation of aftermarket devices that defeat pollution controls on vehicles used on streets and highways.

Mobile sources are a significant contributor to air pollution in the United States. The Act authorizes the EPA to set standards applicable to emissions from many categories of vehicles and engines. One such category is "motor vehicle," which the Act defines as "any self-propelled vehicle designed for transporting persons or property on a street or highway."¹ A second category is "nonroad vehicle." The term "nonroad vehicle" includes, for example, snowmobiles, all-terrain vehicles, and other vehicles that are not operated on a street or highway, but it specifically excludes "motor vehicles" and vehicles that are used solely for competition.² Purpose-built, dedicated competition vehicles, like the kind used in professional competition motorsports, do not fall within either category. Accordingly, such vehicles are not subject to the Clean Air Act regulation of motor vehicles and nonroad vehicles and the Act does not authorize enforcement actions against persons who manufacture or sell parts for such vehicles.

To comply with emissions standards, motor vehicle manufacturers develop emissions control technologies, which they incorporate in the design of the motor vehicles they certify for sale in the United States (EPA-certified motor vehicles). Such emissions controls include filters and catalysts in the vehicle's exhaust system, as well as software and calibrations that manage fueling strategy and other operations in the engine itself.

¹ CAA § 216(2); 42 U.S.C. § 7550(2); *see also* 40 C.F.R. § 85.1703 (further defining "motor vehicle").

² CAA § 216(2); 42 U.S.C. § 7550(2).

The Act prohibits tampering with these emissions controls, as well as manufacturing, selling, and installing aftermarket parts that defeat those controls (commonly known as aftermarket defeat devices).³ These prohibitions apply to all devices used to defeat emissions controls installed on EPA-certified motor vehicles, regardless of how the motor vehicle is used.⁴

The Act does not contemplate removing emissions controls from an EPA-certified motor vehicle in order to convert it into a competition vehicle that operates only on a race track, not streets and highways. As a matter of enforcement discretion, the EPA is not interested in bringing enforcement actions against persons who manufacture, sell, or install parts that transform a street-legal vehicle into a race car that is operated only on a race track. Our focus is on addressing defeat devices that are installed on street vehicles which, we have found, accounts for most of the defeat devices sold today.

In fact, the EPA has found numerous companies and individuals that have manufactured and sold both hardware and software specifically designed to defeat required emissions controls on motor vehicles used on public roads. Our recent enforcement cases have addressed more than one million such aftermarket defeat devices. Illegally-modified vehicles contribute substantial excess pollution that harms public health and impedes efforts by the EPA, tribes, states, and local agencies to plan for and attain air quality standards. For these reasons, and in response to requests from states, the EPA has made *Stopping Aftermarket Defeat Devices* one of our National Compliance Initiatives for 2020 – 2023. Under this initiative, EPA personnel are providing compliance assistance and taking enforcement actions to secure compliance with the Act's prohibitions on tampering and aftermarket defeat devices.

Our enforcement focus on aftermarket defeat devices has led some to think that the EPA seeks to stop the tradition of converting EPA-certified motor vehicles to vehicles that are used solely for competition motorsports. That is not the case. The EPA has never taken, and has no intention to take, enforcement action against vehicle owners for removing or defeating the emission controls of an EPA-certified motor vehicle for the purpose of permanently converting it to a vehicle used solely for competition motorsports.

³ 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), as follows:

- **Tampering:** CAA § 203(a)(3)(A), 42 U.S.C. § 7522(a)(3)(A), 40 C.F.R. § 1068.101(b)(1): “[The following acts and the causing thereof are prohibited] 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 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;”
- **Aftermarket Defeat Devices:** CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B), 40 C.F.R. § 1068.101(b)(2): “[The following acts and the causing thereof are prohibited] 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 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 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;”

⁴ The 1990 amendments to the Act expanded the prohibitions on tampering and defeat devices. Prior to those amendments, in order to enforce against an aftermarket defeat device manufacturer, the EPA needed to prove that manufacturer's devices were actually used by the buyer or someone else to tamper a vehicle. Congress thought that required “an indirect and cumbersome method of proof,” and therefore created section 203(a)(3)(B) of the Act, 42 U.S.C. § 7522(a)(3)(B), to “clearly prohibit the manufacture, sale, or offering for sale of such devices where it is known or should be known that they will be used for tampering.” S. Rep. No. 101-228, at 124 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3509.

In the course of investigating companies concerning their manufacture and sale of parts designed to defeat emissions controls on EPA-certified motor vehicles, these companies sometimes claim that the parts were intended only for competition motorsports. EPA personnel ask such companies to substantiate their claims and, as a matter of enforcement discretion, forego enforcement where the company can provide information showing that the vehicle for which a part or component is manufactured, sold, or installed is in fact used solely for competition motorsports. No particular information is in and of itself conclusive. When exercising enforcement discretion, the EPA considers the totality of the circumstances, including the attributes of the aftermarket parts and overall volume of sales.

We have found that many companies that make and sell aftermarket defeat devices claim "competition only" use but cannot provide any information to show that their products are used in competition motorsports. In many instances, such claims are dubious because the parts at issue are for motor vehicles rarely used in competition motorsports (such as diesel trucks) or the parts have features suited for the road rather than the race track (such as improved fuel economy). Many companies we investigate operate wholesale or internet-based retail businesses that sell indiscriminately to the public at large. Some utilize point-of-sale disclaimers or require buyers to check a box to acknowledge the part is for "competition only," but such measures are inadequate for keeping aftermarket defeat devices off vehicles used on public roads. To illustrate this point, recent EPA investigations have revealed evidence showing that hundreds of thousands of diesel pickup trucks have had their emissions controls completely removed, and most or all the aftermarket defeat devices used to tamper these trucks were sold under the claim of "competition only." The sheer volume of aftermarket defeat devices belies the assertion that they are only for competition motorsports.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Carolyn Levine in the EPA's Office of Congressional and Intergovernmental Relations at Levine.Carolyn@epa.gov or (202) 564-1859.

Sincerely,


Susan Parker Bodine