



ANNIVERSARY

March 13, 2023

Filed: www.regulations.gov

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Michele McKeever
Chief, National Planning and Measures Branch
Office of Enforcement and Compliance Assurance
Mail Code M2221A
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EPA's National Enforcement and Compliance Initiatives (NECIs)
for Fiscal Years 2024-2027 [Docket ID No. EPA-HQ-OECA-2022-0981]

Dear Ms. McKeever,

The Specialty Equipment Market Association (SEMA) welcomes the opportunity to comment on the Environmental Protection Agency's (EPA) proposed National Enforcement and Compliance Initiatives (NECIs) for fiscal years 2024-2027, 88 Fed. Reg. 2,093 (Jan. 12, 2023).

SEMA supports the EPA's proposal to shift *Stopping Aftermarket Defeat Devices for Vehicles and Engines* (the "Defeat Device Initiative") from the NECI list and return enforcement against these products to the core or standard enforcement program. We take this as a sign of progress and look forward to collaborating with the EPA in the coming months to further educate businesses on compliance responsibilities under the CAA.

Background on SEMA

SEMA is a non-profit trade association that represents over 7,000 mostly small businesses around the country that manufacture, distribute, and retail specialty parts and accessories for motor vehicles. The industry employs over 1 million Americans and produces performance, functional, restoration and styling-enhancement products for use on passenger cars, trucks, SUVs, and special interest collector vehicles. SEMA members market products that enable automotive enthusiasts to personalize the style and upgrade the performance of their motor vehicles, including everything from classic cars to four-wheel drive vehicles to dedicated race cars.

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SEMA is most well-known for putting on the [SEMA Show](#) in Las Vegas, which is one of the largest trade shows in North America. The 2022 SEMA Show featured over 2,000 exhibitors and included over 130,000 attendees from around the world, showcasing the latest trends in performance and styling modifications of motor vehicles. The annual, trade-only event enables automotive specialty equipment manufacturers to debut new, innovative products, and connect with industry buyers from all over the world. SEMA has also used the show to actively promote emissions compliance through collaborative presentations with the EPA.

While SEMA's and the broader automotive industry's roots are tied to the internal combustion engine, the association prides itself on maintaining a forward-looking vision that enables all types of automotive enthusiasts to modify and personalize their vehicles of choice, including zero emissions vehicles. For example, SEMA has strongly supported efforts in California to create a financial rebate program to convert gas- and diesel-powered motor vehicles into ZEVs and has allocated increasing space to ZEVs at the SEMA Show over the past four years. The SEMA Electrified section at the 2022 SEMA Show featured over 60 exhibitors with over 21,000 square feet dedicated to promoting electric vehicles technology.

EPA has made progress on defeat devices, but with unintended consequences for small businesses

EPA has made progress addressing the problem of illegal defeat devices over the past few years. As the agency notes, it has resolved approximately 130 cases since the initiative was announced, assessed \$33 million in civil penalties, and raised awareness of the pollution that such devices cause. The Enforcement Division of the California Air Resources Board (CARB), one of the most sophisticated and committed regulators of mobile source pollution in the world, has praised the effort and the effect it has had.¹

While SEMA does not support the sales of products that increase emissions beyond permissible limits for on-road use, overly aggressive enforcement of the tampering and defeat device prohibitions—without providing clear, actionable guidance to companies seeking in good faith to comply—risks “unduly restraining commerce in the aftermarket sales and service industry.”² America has a rich tradition of personalizing, modifying, and upgrading motor vehicles. Thousands of businesses, over 90% of which are small businesses, help enthusiasts to pursue this passion by producing, selling, and installing aftermarket parts.

The risk of inconsistent enforcement has exacerbated this issue. As the EPA's Office of Inspector General (OIG) noted in a recent report, EPA headquarters has provided only limited technical trainings, creating a real risk that EPA regions and state enforcement

¹ See EPA, Office of Inspector General, *The EPA is Not on Track to Reach its National Compliance Initiative Goals to Stop Aftermarket Defeat Devices and Tampered Vehicles* at 7 (Jan. 25, 2023) (hereinafter *OIG Report*).

² EPA, *The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act* at 1 (Nov. 23, 2020).

agencies will take different positions on the legality of a particular product or modification, creating additional uncertainty.³

This harm to small businesses must be considered when setting enforcement priorities. In determining whether to conclude the Defeat Device Initiative, EPA has committed to consider whether an initiative “promot[es] a level playing field” among regulated entities, and the consistency of the initiative with the agency’s Strategic Plan.⁴ That plan clearly articulates the EPA’s “commitment to give appropriate consideration to small business needs, interests, and impacts during policy and rule development.”⁵

A compliance-based approach is appropriate going forward

Now that the EPA has “put the industry on notice that the United States will vigorously enforce the Clean Air Act’s prohibitions on defeat devices,”⁶ the appropriate next step is enhanced, constructive engagement with aftermarket part manufacturers, sellers, installers, and other stakeholders in the industry. This will more effectively “ensure national consistency . . . and achieve compliance,”⁷ than continuing the Defeat Device Initiative.

While the EPA’s tampering policy provides helpful guidance on how to demonstrate compliance, uncertainty remains. For example, the policy indicates that EPA will “typically” find that there is a reasonable basis for compliance where testing “shows that the vehicle, engine, or piece of equipment will comply with all applicable regulations including emissions standards for its full useful life.” However, applying that sound general principle to a specific part and test procedure can raise technical questions, and so it would be helpful for there to be additional mechanisms for entities like SEMA to obtain further EPA technical input on testing methodologies, to avoid the risk that a part may be tested in good faith and believed by a company to be compliant, but the EPA taking a differing view years later.

SEMA, as the trade association for the specialty aftermarket part industry, is a natural choice to facilitate this constructive engagement. One of SEMA’s key missions since its founding in 1963 is working with policymakers to develop effective and sensible regulatory oversight of automobiles and auto parts. As representatives of the industry that produces aftermarket add-on and performance parts, SEMA worked closely with CARB to help create its Executive Order (EO) program in 1977 and to subsequently update it in future decades. The EO program allows aftermarket manufacturers to demonstrate to CARB that a motor vehicle remains emissions-compliant after a part has been installed. SEMA’s goal was to collaborate with lawmakers and regulators to design a program that protects clean air while providing industry with a predictable, reasonable, and affordable way to test their parts and certify that they do not increase emissions compared to an original equipment manufacturer (OEM) part. Over the last 45 years, the specialty automotive aftermarket

³ See OIG Report at 16-17.

⁴ EPA, Public Comment on EPA’s National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027, 88 Fed. Reg. 2093, 2094 (Jan. 12, 2023).

⁵ EPA, Strategic Plan FY 2022-2026 at 107 (March 2023).

⁶ EPA, OIG Report at 36 (EPA Response).

⁷ 88 Fed. Reg. at 2,094.

industry has received about 5,400 EOs to certify their aftermarket parts are emissions compliant.

SEMA has worked for decades to educate industry about the EO program and to promote emissions compliance generally. Each SEMA Show since 2007 has featured multiple educational sessions on emissions compliance. EPA and CARB staff participation on panel discussions has proven to be invaluable to SEMA members, as the emissions-focused educational sessions are among the most well attended at the show each year. SEMA also uses its biweekly newsletter and monthly magazine to educate industry on its obligations to produce and sell emissions compliant products.

In addition to the aforementioned educational sessions at the SEMA Show, which are jointly developed by SEMA and EPA personnel, SEMA has periodically updated EPA staff, primarily in the Air Enforcement Division, on SEMA's emissions compliance efforts and has sought to work with the EPA to both educate the industry as well as provide clear guidance on compliance.

SEMA's Emissions Testing Facilities Are a Resource to Facilitate EPA Compliance Efforts

SEMA recognizes the importance of test data to inform engineering judgment that a vehicle modification will not compromise emissions performance and has successfully provided that to its members for almost a decade. SEMA looks forward to working with the EPA to use these capabilities to promote compliance.

SEMA has invested over \$25 million in state-of-the-art facilities, known as the SEMA Garage(s), to provide emissions testing to help our members demonstrate that their products are emissions compliant at an affordable cost. The SEMA Garage has helped aftermarket businesses gain CARB approval for over 600 EOs. SEMA has been credited with the testing and/or application preparation (and shepherding through the process) about half of all the aftermarket EOs that CARB has issued over the past five years.

Building on the success of these efforts in California, SEMA has developed a robust test program designed to meet the requirements of the EPA's most recent tampering guidance, branded "SEMA Certified – Emissions." To SEMA's knowledge, no part that has been SEMA Certified has ever been the subject of an enforcement action by either EPA or CARB for tampering with a vehicle or constituting a defeat device.

SEMA first opened the SEMA Garage in 2014, in Diamond Bar, California. The facility is CARB-recognized and designed to provide industry with the resources to test their products and expedite submission of EO applications. SEMA staff perform all tests (except for evaporative emissions) required for companies to obtain a CARB EO for both gasoline and diesel vehicles. In recent years, SEMA has worked with California lawmakers and regulators to create an expedited EO certification program and authorize an EO application fee structure that provides CARB with additional resources to hire enough staff to reduce the time it takes to process EO applications.

The SEMA Garage has progressively expanded its services over the last few years to assist SEMA member companies in developing products from start to finish. For businesses looking to produce performance and engine-related products, the garage's emissions laboratory helps them to test their products at an affordable cost and demonstrate that a vehicle will remain emissions-compliant once they are installed. SEMA's emissions compliance center includes experts and resources available to help members navigate the process, including:

- Evaluation of a product and recommendations for compliance procedures
- Assistance with the SEMA Certified-Emissions or CARB EO process
- Interaction with CARB staff on the member's behalf
- Review and evaluation of test data

Building on the success of the SEMA Garage in California, SEMA opened a second SEMA Garage in Plymouth, Michigan in August 2022. The SEMA Garage Detroit is a 45,000 square foot facility that offers emissions and horsepower testing for all-wheel-drive, gas, and diesel vehicles along with vehicle lifts, full sets of tools, fabrication equipment, an alignment rack, 3-D scanning tools and engineering software. The lab accommodates a 48-inch all-wheel-drive chassis dynamometer and includes a new emissions test bench. With equipment that meets the new 1066 testing requirement standards, SEMA Garage Detroit will be able to perform all required CARB and EPA test procedures. Like the high-tech SEMA Garage in Diamond Bar, the Detroit facility provides aftermarket parts manufacturers access to sophisticated resources that are typically accessible only to large-scale manufacturers. The SEMA Garage has an experienced staff of 23 people, who work closely with our member companies to develop products and demonstrate that they are emissions compliant.

The SEMA Garage presents an opportunity for the EPA to ensure the accuracy and reliability of aftermarket part testing. To that end, we would welcome providing the EPA additional information regarding testing capabilities and processes. EPA recognition of the Garages, whether formally through existing EPA programs or otherwise, would encourage greater member participation, and thus benefit the environment while providing businesses with regulatory certainty. We would also welcome an ongoing technical dialogue to ensure that the SEMA certification process appropriately addresses EPA's expectations on a technical, part-by-part basis.

Conclusion

SEMA supports returning the Defeat Device Initiative to a "core" enforcement program at the end of FY 2023. In three years, EPA has made progress on stopping illegal defeat devices, raised awareness, and addressed noncompliance. What the aftermarket industry needs now is clear, consistent guidance, above and beyond the EPA's 2020 Tampering Policy, on the types of modifications the agency considers to be improper, as well as an effective certification program that companies can rely on. While the EPA formally administers a voluntary aftermarket certification program, the regulations have not

received a substantive update in over thirty years, and receives no applications.⁸ With these in place, emissions issues can be readily addressed while also allowing legitimate businesses to thrive. SEMA stands ready to engage with its members on communicating expectations, and to provide accurate assessments of emissions performance through its state-of-the-art SEMA Garage facilities.

SEMA thanks the EPA for considering our comments on the proposed NECI list for fiscal years 2024-2027. We appreciate the EPA's willingness to work with SEMA and look forward to expanding our efforts to ensure that specialty aftermarket parts do not increase emissions relative to OEM parts.

If you have any questions about the comments, please feel free to contact me at karenbc@sema.org or (202) 796-0850.

Sincerely,

A handwritten signature in black ink, appearing to be 'KB' with a stylized flourish.

Karen Bailey-Chapman
Senior Vice President, Public and Government Affairs
Specialty Equipment Market Association (SEMA)

⁸ See 40 C.F.R. 85.2112 *et seq.*; See also 87 Fed. Reg. 60,393, 60,393 (Oct. 5, 2022) (EPA stating that it has received only two applications for voluntary certification since 1989).