

## **CARB ENFORCEMENT ADVISORY**

### **COMPETITION VEHICLES AND PERFORMANCE AFTERMARKET PARTS IN CALIFORNIA:**

#### **SALES, SUPPLY, USE REQUIREMENTS AND PENALTIES**

The purpose of this advisory is to help the public understand how the California Air Resources Board (CARB) conducts violations enforcement with regard to competition (racing) vehicles, performance aftermarket parts, and tampering pursuant to the California Code of Regulations, Title 13 § 2220 et seq., California Code of Regulations, Title 13 § 2470 et seq., California Vehicle Code §§ 27156 and 38391, and California Health & Safety Code § 43151 et seq. To achieve that goal, this advisory provides a general overview and description of these regulations. This advisory does not, and is not intended to, cover all possible enforcement circumstances for these regulations; CARB will make case-by-case enforcement determinations. A summary of this advisory is as follows:

- CARB enforces against any manufacturer, wholesaler, distributor, dealer, installer, retailer and/or repair shop or facility if they offered for sale or sold an uncertified vehicle, an illegally modified vehicle, or an illegal part, or installed an illegal part on an emission-controlled<sup>1</sup> vehicle that is operated on a public highway<sup>2</sup>.
- CARB enforces against individual vehicle owners (consumers) that have violated the law by tampering, modifying, or installing illegal parts on emission-controlled vehicles operated on a public highway.
- Violations of these requirements are subject to penalties up to \$37,500 per violation.
- This advisory describes actions that manufacturers, wholesalers, distributors, dealers, installers, retailers, repair shops, and consumers may take to help minimize the potential for non-compliance. CARB considers these actions when exercising enforcement discretion in determining an appropriate penalty.

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<sup>1</sup> Generally these are vehicles model-year 1966 and newer, motorcycles model-year 1978 and newer registered or identified by the Department of Motor Vehicles, and off-highway recreational vehicles model-year 1997 and newer with emission standards and/or emission controls.

<sup>2</sup> Highways are defined in Vehicle Code § 360.

Performance aftermarket parts such as exhaust headers, software tuners, air intakes, superchargers, and turbochargers typically increase vehicle performance. These parts and others typically require an exemption from the regulatory requirements (known as a CARB Executive Order (EO)<sup>3</sup>) to be legally advertised, offered for sale, sold, installed, and/or used in California. However, if it is installed and used on a racing vehicle<sup>4</sup>, a performance aftermarket part may be advertised, offered for sale, sold, installed, and/or used in California without an EO.

California laws and regulations prohibiting advertising, offering for sale, selling, installing, and/or using performance aftermarket parts on emission-controlled vehicles are generally referred to as California's "anti-tampering" laws. In addition to explaining the legal requirements for the sale and use of performance aftermarket parts in California for consumers and industry participants, this advisory also describes actions industry participants can take to strengthen compliance, which, when documented, CARB will consider when deciding how to enforce California's anti-tampering laws.

CARB's mobile source certification programs are the fundamental component of California's motor vehicle emissions control program. All on- and off-road emissions-controlled vehicles or engines must be in a legally-certified configuration for operation on any California public highway. CARB certifies emissions control systems for on- and off-road vehicles and engines, and offers a pathway for approval of the sale and use of aftermarket parts that do not adversely impact emissions control systems or emissions standards (Health & Safety Code §§ 43013, 43018, 43101, 43102, 43104, 43105, and 43107.) Aftermarket parts manufacturers that can demonstrate that its parts do not adversely impact engine emissions control systems are issued a CARB EO that allows the part to be legally advertised, offered for sale, installed, and/or sold for on-road or off-road use in California.

Under California law, a public highway includes any public street or roadway, public dirt road, public park, or publicly-maintained right of way that is open to the use of the public for vehicular travel (Vehicle Code § 360), and a vehicle is any device that can be propelled or moved upon a public highway – this includes any car, truck, on- and off-highway motorcycles, and other on- and off-road recreational vehicles (Health & Safety Code § 39059; Vehicle Code § 670).

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<sup>3</sup> If the part or modification is shown to not increase vehicle emissions, it is granted an **exemption** from emission control system anti-tampering laws. This **exemption** is called an Executive Order (EO). While the two terms "exemption" and "EO" may be used interchangeably, this advisory will use the term CARB EO throughout.

<sup>4</sup> As defined in Health & Safety Code § 39048.

## **Manufacturers, Wholesalers, Distributors, Dealers, Retailers, Installers, and Repair Shops**

CARB anti-tampering requirements are in place to protect the emissions reductions achieved by CARB's certification program and ensure compliance with the federal Clean Air Act. Manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities are in violation of California law if they offer for sale, sell, and/or install performance aftermarket parts without an applicable CARB EO on an emission-controlled vehicle for operation on a public highway as defined by California law. **Such violations can occur regardless of any real or claimed intent regarding how the part will be used – such as the part will only be used on racing or competition vehicles.**

In California, manufacturers, wholesalers, distributors, dealers, retailers, installers, and/or repair shops or facilities may build uncertified vehicles and manufacture, sell, and install performance aftermarket parts not covered by a CARB EO if those vehicles are racing vehicles and those parts are used on racing vehicles. The racing vehicle exemption in California law exempts racing vehicles from vehicle emissions control requirements (Health & Safety Code § 43001) and defines a racing vehicle as a competition vehicle *not* used on a public highway (Health & Safety Code § 39048).

For any person engaged in the business of retail sale or installation of add-on or modified part(s) which do not have a CARB EO, CARB regulations (California Code Regulations, title 13 § 2222(f)) require the person to keep records of such activity, including the date of sale or purchase, the purchaser name and address, vehicle model, and work performed, if applicable. Records must be available for CARB inspection and kept for four years from the date of sale or installation.

**Any manufacturer, wholesaler, distributor, dealer, installer, retailer, and/or repair shop or facility is potentially liable if they offered for sale or sold an uncertified vehicle, illegally modified a vehicle, or offered for sale, sold, or installed a performance aftermarket part without an applicable CARB EO on a vehicle operating on a public highway. Violations, including failure to keep records as required, are now subject to increased penalties up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).**

The magnitude of penalties and liability for violations generates a substantial risk for manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities participating in the racing vehicle and performance aftermarket parts market in California. In enforcing California law, CARB encourages manufacturers, wholesalers, distributors, dealers, retailers, installers, and repair shops or facilities to minimize their risk of an enforcement action for non-compliance. CARB will be focusing enforcement on, and reserving the highest penalties for, cases where the responsible party was complicit or took little or no action to prevent potential violations. Where there is a violation, CARB measures the severity of the violation by

considering all relevant facts and circumstances of each case, including eight statutory factors required by law (Health & Safety Code § 43024). CARB settles cases using its adopted [Enforcement Policy](#), which lists additional factors CARB considers.

### **Consumers**

Consumers can avoid violations by purchasing, installing, and/or using performance products that have a CARB EO for their own specific vehicle model.

Operating an uncertified, tampered, or illegally-modified vehicle on a public highway is a violation of California law and subject to a failure at Smog Check, loss of Department of Motor Vehicles (DMV) registration, proof of correction, and fines. An emission-controlled vehicle which has been modified with a performance aftermarket part that does not have a CARB EO is tampered under the law (Vehicle Code §§ 27156 and 38391) and therefore is illegal to register or identify with DMV or operate on a public highway in California.

**CARB conducts enforcement actions against individual vehicle owners that have violated the law by tampering, modifying, or installing illegal parts on emission-controlled vehicles operated on a public highway. Any person that illegally modifies or operates an uncertified or tampered vehicle on a public highway as defined by California law is subject to a DMV registration stop and a penalty of up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).**

### **Examples of Industry Practices That Strengthen Compliance**

Manufacturers, wholesalers, distributors, dealers, installers, retailers, and/or repair shops or facilities that advertise, offer for sale, or sell uncertified vehicles or advertise, offer for sale, sell, or install performance aftermarket parts without CARB EOs must show the vehicle is not an emission-controlled vehicle, or is a racing vehicle or that their products are used on a racing vehicle. Taking the actions below will not absolve manufacturers, wholesalers, distributors, dealers, installers, retailers, and/or repair shops or facilities from liability under California law. However, some companies have found the following practices help minimize the possibility of unintentionally violating the laws. Moreover, in any potential enforcement action, CARB considers the actions a company proactively took to minimize non-compliance. The actions described below can include a range of information showing that the vehicle for which a part or component is manufactured, sold, or installed is in fact used solely for racing purposes. No particular information or documentation is in and of itself conclusive. CARB considers the totality of the circumstances when exercising enforcement discretion. Factors to be considered include whether a responsible party:

- Has, or is pursuing CARB EOs for covered products.
- Installs, sells, advertises, and/or services only emissions legal parts (replacement parts and/or parts with CARB EOs) for vehicles with license plates and/or DMV identification/registration.<sup>5</sup>
- Verifies there is no license plate and/or registration prior to installing performance aftermarket parts or performing modifications without a CARB EO.
- Refuses to perform emissions-related repairs on licensed and/or registered vehicles (other than a return to original equipment manufacturer (OEM) certified configuration) that are missing or have tampered emission control systems such as catalysts, exhaust manifolds, turbochargers, exhaust gas recirculation (EGR), diesel particulate filters (DPFs), selective catalytic reduction (SCR), or obvious software tampering.
- Refuses to illegally modify any emissions-related parts on a certified vehicle, or install performance aftermarket parts without a CARB EO on a vehicle with a license plate and/or registration. A true racing vehicle should be trailered to any events or to any repair facility as they are illegal to operate on a public highway.
- Notifies the vehicle owner that their vehicle is tampered and not legal for use on public highways.
- Educates and advises consumers against illegal modifications and the potential consequences.
- Labels products without CARB EOs to clearly notify consumers in writing that these products are illegal to operate on any public highway and explains that this means any public paved or unpaved roadway or in a public park and these products are only legal if used on a racing vehicle. Also, explains that violations are subject to a maximum penalty of \$37,500 per violation per vehicle, revocation of registration by DMV, loss of use on California public right of ways, and proof of correction of the tampering.
- Confirms that the consumer has a legitimate reason for purchasing a product without a CARB EO by verifying and keeping documentation including the make, model, and vehicle identification number (VIN). Verifies that the part(s)

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<sup>5</sup> All references to DMV registration in this advisory refer to DMV registration that authorizes a vehicle to operate on or off a public highway.

sold are appropriate for the identified racing vehicle, and that the racing vehicle is not licensed and/or registered with the DMV. Obtains information about the consumer including name, address, driver's license number, and any documentation and affiliation with a racing organization, club, sanctioning body, track, racing rulebook, etc., and a signed affirmation/affidavit that the product is for racing only.

- Isolates and controls the sale of products without a CARB EO by documenting all sales information including, but not limited to, the make, model, year, VIN, and any pertinent vehicle information, along with a detailed invoice of any work performed.
- Keeps track of sales and/or installation of products without a CARB EO as sales and production numbers should be representative of the low numbers of true racing applications.
- Only markets and advertises products with CARB EOs and only sells and/or installs products with CARB EOs.
- Has a robust training program for all sales, marketing, and shipping staff on the anti-tampering prohibitions, how to determine whether a part has an EO, the recordkeeping requirements, penalties for violations, and proactive measures to prevent illegal sales.
- Has a robust audit program, and/or corporate compliance program, including elements such as quality assurance/quality control methodologies, regularly scheduled inspections/audits, recordkeeping requirements, reporting requirements, disclosure requirements, a Whistleblower program, etc.

**Any manufacturer, wholesaler, distributor, dealer, installer, retailer, and/or repair shop or facility is potentially liable if they offered for sale or sold an uncertified vehicle, illegally modified a vehicle, or offered for sale, sold, or installed a performance aftermarket part without an applicable CARB EO on a vehicle operating on a public highway. Violations, including failure to keep records as required, are now subject to increased penalties up to \$37,500 per violation (Health & Safety Code §§ 43016 and 43154).**

In conclusion, for information regarding this advisory or to provide information about possible tampering, please contact [Tampering@arb.ca.gov](mailto:Tampering@arb.ca.gov).

*This advisory only explains the statutes and regulations and does not alter, amend, or modify the laws in any way. It does not provide any options for alternative relief or safe harbor from potential violations. In the event of any conflicting interpretation, the statutes and regulations control.*