are sent to a dealer by a manufacturer, or as a dealer can send to a mechanic. However, reprogramming can only occur at a dealership or other facility which has the necessary equipment to perform a reprogramming event. In addition, the change made to a vehicle by reprogramming is a change to "data" within the vehicle. In effect, the tool is communicating with the computer in the vehicle, telling it to do something different. This appears to be information.

Finally, though parties may argue whether the data being downloaded into the vehicle is a "part" or "information" or both, it is clear to EPA that the current situation, in which dealerships can make manufacturer-suggested repairs to vehicles using data provided by manufacturers to dealerships, but not to independent technicians, is exactly the type of situation that Congress intended to be rectified by section 202(m)(5).

EPA believes that reprogramming is a repair action. The entire purpose of reprogramming vehicle computers is to "repair" certain problems discovered in the vehicles. EPA believes that the key issue is whether independent service providers are being prevented from doing what dealerships are allowed to do due, in part, to lack of information. EPA believes that reprogramming events should be considered repairs under the statute, especially since such reprogramming is being done as a result of recommendations offered by a manufacturer in order to change some aspect of the vehicle that the manufacturer believes was initially incorrectly produced.

Both Ford and Chrysler state that reprogramming information is not "needed" as that word is used in section 202(m)(5).14 Yet, even presuming, for the sake of argument, that EPA should only mandate disclosure of emissionrelated information that is "necessary," 15 no manufacturer makes clear how such information is not necessary to accomplish the reprogramming of the vehicle. Whether the vehicle is reprogrammed by a dealer or an aftermarket technician, the repair person must have the information to make the repair. EPA does not believe that the "instructions" for making emission-related diagnosis and repairs is limited to "go see your local dealer." The information necessary to make the

¹⁴ One reason they give is that such information is not emission-related. We discuss this issue below

repair must be in the possession of the aftermarket to the same extent it is in the possession of dealers.

Moreover, as EPA is only requiring information to be produced regarding recalibrations offered by a manufacturer, it is hard to understand how such reprogramming events would not be "necessary" events to repair the vehicle. A manufacturer would presumedly not offer such recalibrations unless it found a feature of the vehicle that it felt needed to be changed.

The Agency disagrees with statements that reprogramming is not "emissionrelated." Though certain reprogramming events may have no emission-related effects, EPA believes that numerous reprogramming events will have such effects. First, the docket indicates that certain calibrations are directly intended to fix problems related to the emissions of the vehicles. Though these calibrations may be covered in a manufacturer's warranty, there is no assurance that a proper recalibration will occur during the warranty period. Thus, providing independent technicians with the ability to provide such reprogramming would not be an unnecessary endeavor.

In addition, recalibrations to fix driveability problems will also have emission-related effects. As discussed elsewhere, "emission-related" repairs are not limited to repairs of the emission control system or repairs necessary to make use of the OBD system.

As EPA discusses above in the section on the definition of "emission-related," the correction of driveability problems can often have an emissions impact. This potential for increased emissions is heightened when cumulative recalibrations occur within an engine family. Therefore, EPA is requiring that all reprogramming events that are emission-related, as that term is defined above, including reprogramming actions occurring for primarily reasons of drivability, must be made available to independent technicians.

Contrary to comments made regarding recalibration information being proprietary, the Agency believes that where a manufacturer provides such information to some or all of its dealers, such information cannot be considered proprietary under section 202(m)(5). The Act specifically requires that any information provided directly or indirectly to dealerships must also be provided to anyone who services or repairs vehicles.

Contrary to manufacturer arguments that dealership employees don't receive recalibration data because they can't see it due to the form in which it is provided to them, EPA believes that where a manufacturer provides dealerships with machines that hold such information or can disseminate such information and where these machines allow dealerships to use such information to repair vehicles, such information is being provided indirectly to dealerships, and thus must be made available to independent technicians in a similar manner.

In response to Ford's comment that it opposes any requirements which mandate that it make available all detailed emissions recalibrations, EPA is only requiring that reprogramming capability be made available, not direct calibration codes. As discussed below, EPA does believe that the internal computer codes within the vehicle control modules are proprietary, as such material is not released to dealerships. EPA, therefore, is not requiring direct disclosure of the recalibration data itself. EPA does not believe that manufacturers should be forced to provide unprotected proprietary information directly to aftermarket technicians merely because it has provided such material indirectly to its dealers, especially where such information is provided to dealers in a protected fashion, such that even the dealers could not assess the underlying information. Some manufacturers have gone to considerable lengths to prevent direct disclosure of this information even to its dealers; therefore, EPA will not require such information be provided directly to the aftermarket.

Rather, EPA is allowing the manufacturers to indirectly provide this data to independent technicians in the same or similar fashion as they provide this data to dealership technicians by offering independent technicians reprogramming capabilities to the same extent manufacturers offer such capabilities to their own dealers. This will help ensure that independent technicians remain competitive with dealerships as intended by section 202(m)(5).

EPA agrees with comments from the aftermarket that, based on the language of section 202(m)(5) of the CAA and its legislative history, Congress intended independent technicians to have all the information necessary to make emission-related repairs, including reprogramming capabilities, that are available to dealerships or others. Congress wanted to ensure the continuation of a competitive marketplace, thereby providing consumers with an option as to where to have their vehicles serviced. In addition to the reprogramming capability, manufacturers will also be required to publish information as to

¹⁵The term "needed" does not modify the clause referring to "such other information including instructions for making emission related diagnosis and repairs."