when recalibrations are issued, since such information can impact other repairs. Also, EPA expects that some independent technicians will not want to obtain reprogramming capability, but will want to know when such service is necessary so that they can take vehicles to the dealerships for such service or refer customers to seek dealership service on their own.

EPA also agrees with comments indicating that there are significant practical competitive disadvantages to the aftermarket if only dealers can reprogram and that, in the future, many vehicle functions may be controlled through recalibration data. Also, unless a secure means for the aftermarket to obtain reprogramming is found, a substantial amount of maintenance and repairs could be channeled to dealerships who would have a significant information advantage.

The Agency agrees that manufacturers that do not provide reprogramming capabilities to their dealers through the use of electronically eraseable computer chips and do not provide recalibration information to other parties do not have to provide recalibration information or reprogramming capability to independent technicians.

The Agency agrees with the manufacturers that section 202(m)(5) does not require manufacturers to provide calibration, recalibration or design information to aftermarket parts manufacturers. The purpose of this provision is to ensure that independent technicians have access to information needed to service and repair vehicles, thereby ensuring consumers with freedom of choice in where to take their vehicles for repairs. See Statement of Senator Gore, 136 Cong. Rec. S3271–2 (March 27, 1990) ("If we are going to mandate a new onboard diagnostic system, we must give consumers the freedom to choose where they will go to have these systems maintained and repaired." [emphasis added]) Manufacturers are only required to provide reprogramming capabilities to persons who service and repair vehicles, i.e., independent technicians. They are not required to provide recalibration information to other parties.

EPA disagrees with the assertion from aftermarket commenters that section 202(m)(5) is intended to provide for the release of calibration or parts specification information to parts manufacturers. Nothing in the language of the statute itself or in the legislative history indicates that Congress was interested in assuring access and information for the manufacture of aftermarket parts. On the contrary, the legislative history speaks only of the

need to ensure equal access for vehicle *repair* facilities. The language was clearly meant to ensure that such repair facilities have equal information to make emission-related diagnosis and repairs as have the manufacturers' dealerships.

This is why the Congress limited the coverage of section 208(c) (providing that trade secrets need not be made available) to information not provided to dealerships. There is no information indicating that underlying computer data is provided to dealerships. In fact, as discussed above, manufacturers have attempted to protect such information from disclosure. Though the language of section 202(m)(5) does refer to any information provided directly or indirectly to dealers, EPA does not believe that Congress intended to require that information provided to dealers only indirectly, and using secure methods, must be provided directly, without protection, to aftermarket parts dealers. The legislative history clearly shows that Congress had no intention of requiring the release of proprietary information. In fact, the House Report specifically gives as its reason for the trade secrets language the fact that "the computer software can include very sensitive data." House Report at 306. In short, section 202(m)(5) was designed to ensure information already in the public domain was given to all repair providers; it was not designed to expose manufacturers to the divulgence of their most sensitive proprietary information.

Further, EPA has received no information that this information is needed by repair personnel to repair vehicles. There has been no information showing that repair personnel need to see underlying computer codes in order to fix vehicles. This is evidenced by the fact that there have been many comments indicating that service people have no use for such underlying information and would likely not know how to use it if they had access to it.

Aftermarket parts manufacturers commented that engine calibration information is required for the effective production and testing of replacement parts to ensure that they will meet the exacting needs of both current and future engines. Even presuming that this allegation is true, this regulation does not prevent parts manufacturers from obtaining such information. Parts manufacturers can enter into any number of special arrangements with the manufacturers to obtain the desired information. Further, parts manufacturers will be able to make parts in the same manner as they always have.

Parts manufacturers have been making such parts for many years, even as vehicles have become more and more complicated. Though the introduction of OBD will continue the trend of making cars more complex and, therefore, require manufacturers and aftermarket parts manufacturers to meet more exacting standards, it does not require a new regime for providing information for the manufacture of replacement parts. Nor does section 202(m)(5) require such a new regime.

Vehicle manufacturers expend substantial resources to develop these intricate programs. Manufacturers may be justified in their hesitance to allow such information to be freely distributed, especially without proper arrangements. Congress could have extended the reach of section 202(m)(5) to include parts manufacturers. It did not. Given the fact that aftermarket parts manufacturers appear to need information of a more proprietary nature than that of aftermarket repair personnel, it appears that EPA would be going beyond Congressional intent in requiring that such information be provided.

Moreover, SEMA states that the aftermarket industry needs underlying recalibration information to be capable of modifying existing programs on vehicle computer chips. It is just these changes to computer calibrations that trouble manufacturers and also trouble EPA. Where a single entity, the manufacturer, is responsible for programming and updating the vehicle computer, it is relatively easy to determine which computer calibration is on, or should be on, a vehicle. Manufacturers go through a rigorous mandatory certification process to assure EPA of emission compliance of their various calibrations over the useful life of their vehicles. When various part manufacturers are changing calibrations to meet the needs of their parts, then it is more difficult to determine what the proper calibration of the vehicle should be. Moreover, if a subsequent repair person repairs the same vehicle using the instructions generally appropriate for such a vehicle, such a subsequent repair may result in unintended consequences that could impair the emissions (or drivability) performance of the vehicle, especially if the new aftermarket calibration is not made obvious to the subsequent repair person. Also, such aftermarket recalibrations may prevent the manufacturer from instituting later recalibrations on the vehicle, because the newest manufacturer recalibration may be inconsistent with the aftermarket part. Finally, such aftermarket recalibrations