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

Office of Enforcement and General Counsel

June 25, 1974

Mobile Source Enforcement Memorandum No. 1A

SUBJECT: Interim Tampering Enforcement Policy

A. Purpose

The purpose of this Memorandum is to state the interim policy of EPA with regard to enforcement of the "tampering" prohibition--Section 203(a)(3)--of the Clean Air Act. This Memorandum cancels and supersedes Mobile Source Enforcement Memorandum No. 1 of December 22, 1972.

1. Section 203(a)(3) of the Clean Air Act provides:

"The following acts and the causing thereof are prohibited--

(3) 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 title prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser."

Section 205 of the Act provides for a maximum civil penalty of $10,000 for any person who violates Section 203(a)(3).

2. This "tampering" provision of the law has created a great deal of uncertainty, primarily among new vehicle dealers and automotive aftermarket parts manufacturers, regarding what actions and/or use of what parts are prohibited. The terms "manufacturer" and "dealer" in 203(a)(3) refer only to motor vehicle and engine manufacturers and new motor vehicle dealers; however, the law impacts indirectly on aftermarket parts manufacturers through its applicability to vehicle dealers who are customers for their products. Other provisions in the Act establishing manufacturer warranties and authorizing compulsory recall of properly maintained vehicles also have a potential for anti-competitive effects in the aftermarket.

3. In general, it is clear that EPA's primary objective in enforcing the statutory prohibition on "tampering" must be to assure unimpaired emission control of motor vehicles throughout their useful life. It is EPA's policy to attempt to achieve this objective without imposing unnecessary restraints on commerce in the automotive aftermarket.

4. The long range solution to minimizing possible anti-competitive effects that could result from implementation of these statutory provisions may lie in some type of certification program for at least certain categories of aftermarket parts. EPA is currently studying the technical, administrative and legal problems which such a program presents. EPA has yet to develop the policy, procedures, or facilities attendant to any long range solution.

5. In the absence of a long-term solution, and in the absence of proof that use of nonoriginal equipment parts will adversely affect emissions, constraining dealers to the use of only original equipment parts would constitute an unwarranted burden on commerce in the automotive aftermarket. Pending development of a long range solution, the following statement reflects EPA's interim policy in the tampering area. This policy is intended to reduce the uncertainty which dealers now face by providing criteria by which dealers can determine in advance that certain of their acts do not constitute tampering.

6. New vehicle and engine manufacturers have also requested that they be treated, in their aftermarket parts role, similarly to other aftermarket parts manufacturers. Memorandum No. 1 was intended to avoid unnecessary adverse impacts on all aftermarket manufacturers; this revision, therefore, makes it clear that EPA's interim policy extends to vehicle and engine manufacturers.

B. Interim Policy

1. Unless and until otherwise stated, the Environmental Protection Agency will not regard the following acts, when performed by a dealer, to constitute violations of Section 203 (a)(3) of the Act:

(a) Use of a nonoriginal equipment aftermarket part (including a rebuilt part) as a replacement part solely for purposes of maintenance according to the vehicle or engine manufacturer's instructions, or for repair or replacement of a defective or worn out part, if the dealer has a reasonable basis for knowing that such use will not adversely affect emissions performance; and

(b) Use of a nonoriginal equipment aftermarket part or system as an add-on, auxiliary, augmenting, or secondary part or system, if the dealer has a reasonable basis for knowing that such use will not adversely affect emissions performance; and

(c) Adjustments or alterations of a particular part or system parameter, if done for purposes of maintenance or repair according to the vehicle or engine manufacturer's instructions, or if the dealer has a reasonable basis for knowing that such adjustment or alteration will not adversely affect emissions performance.

2. For purposes of clause (1a), a reasonable basis for knowing that a given act will not adversely affect emissions performance exists if:

(a) the dealer reasonably believes that the replacement part or rebuilt part is designed to perform the same function with respect to emission control as the replaced part, or

(b) the replacement part or rebuilt part is represented in writing by the part manufacturer to perform the same function with respect to emission control as the replaced part.

3. For purposes of clauses (1b) and (1c), a reasonable basis for knowing that a given act will not adversely affect emissions performance exists if:

(a) the dealer knows of emissions tests which have been performed according to testing procedures prescribed in 40 CFR 85 showing that the act does not cause similar vehicles or engines to fail to meet applicable emission standards for their useful lives (5 years or 50,000 miles in the case of light duty vehicles); or

(b) the part or system manufacturer represents in writing that tests as described in (a) have been performed with similar results; or

(c) a Federal, State or local environmental control agency expressly represents that a reasonable basis exists. (This provision is limited to the geographic area over which the State or local agency has jurisdiction).

4. For purposes of clauses (1a), (1b), and (1c):

(a) except when necessarily done in conjunction with acts under 1(b) or 1(c) which EPA does not consider to constitute violations of §203(a)(3), the permanent removal or disconnecting or blocking of any part of the original system installed primarily for the purpose of controlling emissions will be presumed to affect adversely emission performance; and

(b) the proscription and appropriate publication by EPA of an act as prohibited will be deemed conclusive that such act will adversely affect emissions performance.

C. Discussion

1. Clause (1a) will apply to new or rebuilt replacement parts, protecting the dealer when he uses such a part to conduct necessary maintenance if a person familiar with the design and function of motor vehicles and engines would reasonably believe that such a part is designed to perform the same function as the replaced part, or if there is written representation by the parts manufacturer that the part is so designed. Other reasonable bases (e.g., emissions test showing no adverse effect) may exist, but these other bases will probably not occur often in the replacement part context. If EPA gains information that certain replacement parts do adversely affect emissions, a listing of such parts will be published.

2. Clause (1b) will protect the dealer who installs add-on parts if he knows, or if it has been represented in writing to him by the part manufacturer, that emissions tests have been performed according to Federal procedures which show that such a part will not cause similar vehicles to fail to meet applicable emission standards over the useful life of the vehicle. The dealer is protected from prosecution even if the test results have not been reported to EPA. However, the aftermarket parts manufacturer who represents that such tests have been conducted should have available the data from the tests, including where, when, how and by whom the tests were conducted should EPA

request it. Such add-on parts might be auxiliary fuel tanks, which would require evaporative emission control on light duty vehicles to the prescribed standard, or superchargers, which would require emission testing showing conformance to standards over the useful life of the vehicle or engine. Clause (1b) will also protect the dealer who installs retrofit devices to reduce emissions at the request of a State or local environmental control agency.

3. Clause (1c) applies to dealers performing necessary adjustments or alterations, according to the vehicle or engine manufacturer's instructions, of parts already on the vehicle or engine, e.g., adjustment of the carburetor or ignition timing. It also covers adjustments or alterations, as in the case of altitude "fixes", if a "reasonable basis" exists as described above.

4. This interim policy provides general guidance to dealers as to those acts which do not constitute tampering and those acts which may constitute tampering. It also allows aftermarket parts manufacturers an opportunity to protect their markets by providing dealers with assurance that their parts do not cause emissions standards to be exceeded. Vehicle and engine manufacturers also often function as aftermarket parts manufacturers. For example, many vehicle and engine manufacturers provide aftermarket parts for the in-use vehicle and engines of other manufacturers as well as for their own in-use vehicles and engines. In their aftermarket parts role, vehicle and engine manufacturers may take the same steps (set forth in this Memorandum) as parts manufacturers who are not also vehicle or engine manufacturers to provide dealers with assurance that they are not violating §203(a)(3). However, in their role as vehicle or engine manufacturers, procedures exist whereby they may obtain approval for any emission related change in a vehicle or engine from its certified configuration or parameters (See MSAPC Advisory Circulars No. 2-B "Field Fixes Related to Emission Control-Related Components" and No. 16-2 "Approval of Emission Control Modifications for High Altitude on New Light Duty Motor Vehicles", March 5, 1974). This Memorandum does not relieve vehicle or engine manufacterers from complying with the procedures set forth in the advisory circulars except in their specific function as aftermarket parts manufacturers.

5. Any questions regarding this interim policy should be addressed to the Mobile Source Enforcement Division (EG-340), Office of Enforcement and General Counsel.

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