6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

FRL- 10015-93-OECA

Notice of Availability of EPA Tampering Policy and Request for Information Regarding 1986 Catalyst Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; request for information.

SUMMARY: The United States Environmental Protection Agency's Office of Enforcement and Compliance Assurance has issued *EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act.* This Policy states how the EPA intends to handle certain potential civil violations of the Clean Air Act's prohibitions on tampering with vehicle and engine emissions controls as well as the manufacturing, selling, offering to sell, and installation of parts and components that defeat emissions controls. The EPA Tampering Policy creates no obligations on regulated parties, and it is not a rule. Further, it is principally a restatement of currently applicable enforcement discretion policies. The EPA Tampering Policy supersedes and replaces former statements of enforcement policy, as specified in the Policy itself.

The EPA Tampering Policy neither supersedes nor replaces a 1986 enforcement policy that is specific to replacement catalytic converters for light-duty gasoline motor vehicles that are beyond their emissions warranty. Rather, with this **Federal Register** document the EPA requests information to help the agency make a future decision on whether and how to update or withdraw the 1986 catalyst policy. EPA does not anticipate any measurable costs to be incurred by the affected entities associated with the Tampering Policy or the request for information regarding the 1986 catalyst policy.

DATES: The EPA requests information relevant to the agency's ongoing evaluation of the 1986 catalyst policy and potential future enforcement policy regarding replacement catalytic converters for light-duty

gasoline motor vehicles that are beyond their emissions warranty. Comments must be received by **[Insert date 60 days after date of publication in the Federal Register].**

ADDRESSES: Submit comments, identified in the subject line by "Catalyst Policy," to tampering@epa.gov.

FOR FURTHER INFORMATION CONTACT: Evan Belser, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Mail Code 2242A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–6850; belser.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Overview of EPA Tampering Policy

Manufacturers employ various systems, technologies, and designs to control emissions of air pollution from their vehicles, engines, and equipment. They do so to comply with Part A of Title II of the Clean Air Act (Act or CAA), 42 U.S.C. §§ 7521 – 7554. These emissions controls reduce emissions of harmful air pollutants and help prevent respiratory disease, premature death, and environmental harm. The Act prohibits tampering with these emissions controls, and also prohibits making, selling, and installing products that defeat emissions controls. CAA § 203(a)(3), 42 U.S.C. § 7522(a)(3). Violations of these prohibitions can severely impact air quality and prevent a level playing field in the aftermarket parts industry and among those who service vehicles and engines.

The EPA's enforcement and compliance efforts to stop tampering and aftermarket defeat devices are the subject of an ongoing National Compliance Initiative. The agency has stepped up its enforcement

in this area in response to the widespread removal of vehicle emissions controls that are essential for achieving and maintaining National Ambient Air Quality Standards. Agency enforcement personnel are holding accountable those who manufacture and sell aftermarket defeat devices, those who tamper with commercial fleets of vehicles, and those service shops that routinely delete emissions control equipment. Such conduct is illegal, and undercuts local, state, and federal efforts to improve air quality.

To complement this enforcement effort, the EPA's Office of Enforcement and Compliance Assurance (OECA) has updated the agency's enforcement policy concerning potential violations of the Act's prohibitions on tampering and aftermarket defeat devices. The *EPA Tampering Policy: The EPA Enforcement Policy on Vehicle and Engine Tampering and Aftermarket Defeat Devices under the Clean Air Act* (EPA Tampering Policy, or Policy) will foster consistency in how EPA enforcement personnel approach this work. This Policy will also provide compliance assistance, for example, by describing measures that aftermarket parts companies, service technicians, and others may take to help prevent violations. This update is helpful in part because prior enforcement policies pre-date the 1990 amendments to the Clean Air Act that added the defeat device prohibition alongside the tampering prohibition and expanded the jurisdiction of the Act to include nonroad vehicles and engines. CAA §§ 203(a)(3)(B) and 213, 42 U.S.C. §§ 7522(a)(3)(B) and 7547. Also, this Policy speaks in terms of today's technology, which has advanced considerably since the time of EPA's prior enforcement policies.

The EPA Tampering Policy is a statement of EPA enforcement policy—it is not a regulation—and so it establishes no performance standards, test methods, reporting requirements, or other features more characteristic of a regulatory certification program. This Policy does not purport to address every possible kind of conduct that may be subject to the Act's prohibitions.

This Policy consolidates and restates the principles of the existing enforcement policies (as listed in the Policy's Introduction). Most notably, in this Policy the EPA reaffirms its longstanding practice of using enforcement discretion not to pursue conduct that could potentially constitute a violation of the

Clean Air Act provided the person performing that conduct has a documented, reasonable basis to conclude that the conduct does not adversely affect emissions. The Policy includes six circumstances that help to illustrate what the EPA generally views to be a reasonable basis deserving of enforcement discretion, paraphrased here:

- Reasonable Basis A: identical to the EPA-certified configuration
- Reasonable Basis B: replacement after-treatment system that is as effective as the vehicle's or engine's original system and is durable enough to last for a period of time equal to at least half of the vehicle's or engine's useful life as defined in EPA regulations
- Reasonable Basis C: addition of a new after-treatment system to decrease emissions
- Reasonable Basis D: emissions testing demonstrates no adverse effect on emissions
- Reasonable Basis E: aftermarket part certified or approved by EPA
- Reasonable Basis F: aftermarket part exempted by the California Air Resources Board

The EPA Tampering Policy may be viewed at the following website: Air Enforcement Policy, Guidance and Publications, https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications#Mobile.

II. Request for Information Relevant to the 1986 Catalyst Policy

By this publication and as explained below, the EPA requests information relevant to the agency's ongoing evaluation of a 1986 EPA enforcement policy that specifically addresses the manufacture, sale, offering for sale, and installation of replacement catalytic converters (or catalysts) for

light-duty gasoline motor vehicles that are beyond their emissions warranty. Sale and Use of Aftermarket Catalytic Converters, 51 FR 28114 and 51 FR 28132 (Aug. 5, 1986) (1986 catalyst policy), *available at* https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications#Mobile.

A. Background

A catalyst is a device installed in the exhaust system of a vehicle. It treats and eliminates harmful pollution produced in the vehicle's engine, and is a type of device commonly referred to as an "after-treatment system." Automakers install catalysts in their new vehicles to meet tailpipe emissions standards (commonly referred to as "OEM catalysts", which stands for original equipment manufacturer). The manufacture, sale, offering for sale, and installation of an OEM catalyst, or an identical catalyst, would not be a violation of the Act. However, manufacture, sale, offering for sale, and installation of a less effective catalyst may be a violation and, in the absence of any applicable EPA enforcement policy, subject to investigation and potential enforcement action.

The EPA issued the 1986 catalyst policy in response to various challenges associated with the early generations of vehicles equipped with catalytic converters. In the 1986 catalyst policy, the EPA stated that the agency would generally take no enforcement action for the manufacture, sale, or installation of a replacement catalyst even if that catalyst was less effective than the OEM catalyst so long as it met certain criteria. The 1986 catalyst policy included performance criteria for replacement catalysts (e.g., control emissions of NOx with 30% effectiveness for at least 25,000 miles). The criteria reflected the anticipated division between those situations where the EPA would likely investigate further and those situations where the EPA would likely take no further action. Replacement catalysts that met the criteria in the 1986 catalyst policy were with few exceptions less effective than the catalysts

that automakers installed in their new vehicles in the 1980s. Catalyst technology has advanced markedly since 1986, and now OEM catalysts are far more effective and durable than in the 1980s.

B. Specific Policy Considerations

The EPA broadly requests information that may inform the agency's ongoing evaluation of the 1986 catalyst policy and potential future enforcement policy regarding replacement catalytic converters for light-duty gasoline motor vehicles that are beyond their emissions warranty. This includes information and data on: potential costs and air quality benefits of withdrawing or changing the 1986 catalyst policy; the current state of the market of replacement catalysts, including the cost, volume of sales, frequency of installation, the age and mileage of vehicles on which replacement catalysts are installed; to what extent catalyst replacement is needed due to failure of the original catalyst, or other reason including theft; and the effectiveness of replacement catalysts at treating air pollution, including whether and to what extent replacement catalysts in the current market conform to the catalysts described in the 1986 catalyst policy.

Further, the EPA specifically requests information relevant to the five following policy considerations.

First, the EPA requests information on whether the agency has accomplished the goals of the 1986 catalyst policy. As detailed in that policy, the stated goals included: supporting fledgling state and local vehicle inspection programs by encouraging them to require their citizens to replace catalysts that were missing, lead poisoned, or otherwise ineffective; and encouraging the development of inexpensive, multiple-application catalysts, and to confirm the effectiveness of these products.

Second, the EPA requests information on whether EPA should establish a consistent enforcement policy for all types replacement after-treatment systems for vehicles and engines. After-treatment systems are devices that treat exhaust from the engine in order to reduce the amount of

pollution emitted into the ambient air. Vehicle and engine manufacturers employ after-treatment systems in order to comply with EPA emissions standards for a wide range of types of vehicles and engines, including gasoline and diesel products for the on-road and nonroad sectors. Common after-treatment systems include catalytic converters, diesel particulate filters, selective catalytic reduction systems, and diesel oxidation catalysts. These systems vary in their applications and technologies, but the question of whether such parts are legal is the same in all cases: do they violate the prohibitions on tampering and aftermarket defeat devices in section 203(a)(3) of the Clean Air Act?

Note that the EPA Tampering Policy includes provisions that generally address replacement after-treatment systems. These provisions are primarily stated in "Reasonable Basis B" in the EPA Tampering Policy (other pertinent provisions are stated in Reasonable Bases A and F). In the agency's ongoing evaluation of the 1986 catalyst policy, the agency is considering whether to withdraw the 1986 catalyst policy and instead apply these general provisions from the Tampering Policy to replacement catalysts for light-duty gasoline motor vehicles that are beyond their emissions warranty. As applied, Reasonable Basis B would say that the EPA would typically find there is a reasonable basis where a catalyst is as effective as the vehicle's original catalyst (which, for example, controls emissions of NOx with more than 90% effectiveness in recent model year vehicles) and will remain as effective for at least half of the vehicle's "useful life" as defined in EPA regulations (e.g., 60,000 miles for many vehicles on the road whose useful life in the regulations is 120,000 miles).

Third, the EPA requests information on whether and how the 1986 catalyst policy affects the market for aftermarket catalysts. Over time, that market has seen demand for increasingly effective catalysts. This follows the same basic progression by vehicle manufacturers which have installed increasingly effective catalysts in their new motor vehicles in order to comply with increasingly stringent tailpipe emissions standards. Manufacturers have also used increasingly advanced on-board diagnostic (OBD) systems to monitor the performance of a vehicle's emissions-related components and provide owners with an early warning of malfunctions through the dashboard "check engine" light (also

known as a Malfunction Indicator Light). Catalysts that control emissions significantly less effectively than OEM catalysts may fail entirely at keeping the "check engine" light off, or may keep the light off for only a short period of time. Note that whether or for how long a replacement catalyst successfully keeps the "check engine" light does not determine whether that catalyst is compliant, but state and local vehicle inspection and maintenance programs require the light be off in order for the vehicle to qualify for registration. Over time, aftermarket catalyst manufacturers have supplied increasingly effective catalysts to help their customers who want to keep the "check engine" light off and to ensure protection of air quality. In meeting this demand, aftermarket catalyst manufacturers commonly make their catalysts more effective than the performance criteria set forth in the 1986 catalyst policy and these more effective catalysts may last longer.

Another market condition relates to the fact that the California Air Resources Board (CARB) requires all aftermarket catalysts sold in California to control air pollution with an effectiveness that is similar to the vehicle's OEM catalyst. Other states including New York and Maine have adopted California's catalyst requirements, at least for those motor vehicles that were originally certified to meet California's emissions standards (which sometimes vary from federal emissions standards depending on the vehicle application). This has created a kind of patchwork where there are significant differences among states in the effectiveness of catalysts for some vehicle applications. The EPA requests information on whether this creates confusion among vehicle owners or challenges for companies that manufacture and supply catalysts, and if so, how. The EPA further requests information on whether and how these conditions might change if the EPA were to withdraw the 1986 catalyst policy and instead employ the EPA Tampering Policy for replacement catalytic converters for gasoline light-duty motor vehicles that are beyond their emissions warranty.

Fourth, the EPA requests information on the effect of EPA enforcement policy on catalyst costs. This includes information on the effect on the cost of catalysts of the 1986 catalyst policy. This also includes information on the effect on the cost of catalysts that may result if the EPA instead applies the

EPA Tampering Policy to replacement catalytic converters for gasoline light-duty motor vehicles that are beyond their emissions warranty. Such information may include price to the ultimate purchaser of catalysts, the frequency of the need for catalyst replacement for the same vehicle, cost considerations for distributors and retailers, and cost considerations for catalyst manufacturers, as well as any non-confidential information on sales volume. More effective catalysts cost more than less effective catalysts because they are manufactured with better materials, better design, and higher amounts of the expensive precious metals that are needed to reduce air pollution. Like many aftermarket automotive parts, catalyst costs vary widely and depend on the catalyst manufacturer, distributor, retailer, and the application (i.e., make, model, and year of the light-duty motor vehicle that needs the catalyst). OEM catalysts are generally the most expensive option for any given application.

Finally, the EPA requests information regarding an appropriate timeline for an orderly transition to a new enforcement policy in the event the EPA replaces the 1986 catalyst policy. The EPA acknowledges that catalyst manufacturers, distributors, retailers, and installers may require time to transition away from catalysts subject to the 1986 catalyst policy. The EPA requests information on what changes may be required for participants in this industry. The EPA specifically requests information regarding an appropriate timeline, or timelines, for manufacturers, distributors, and retailers to transition in the event that the EPA withdraws the 1986 catalyst policy and instead applies the EPA Tampering Policy (specifically Reasonable Bases A, B, and F).

C. Submit Information

Submit comments, identified in the subject line by "Catalyst Policy," to tampering@epa.gov. Comment must be received by **[Insert date 60 days after date of publication in the Federal Register].** Once submitted, comments cannot be edited or removed. The EPA may publish any comment received. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit https://www.epa.gov/dockets/commenting-epa-dockets.

Dated: [DATE]

Susan Parker Bodine

Assistant Administrator, Office of Enforcement and Compliance Assurance.