

MOTOR VEHICLE AIR CONDITIONING ENFORCEMENT GUIDANCE

INTRODUCTION

Section 609 of the Clean Air Act Amendments of 1990 (the Act) regulates the servicing of motor vehicle air conditioners. The final regulations were promulgated on July 14, 1992. Appendix B, the standard for approving recover only equipment, was proposed on April 22, 1992. The Act requires that any service performed on a motor vehicle air conditioner involving the refrigerant be performed by trained and certified technicians using approved equipment. In addition, the sale of refrigerant suitable for use in a motor vehicle air conditioner in containers of less than twenty pounds is restricted to certified technicians after November 15, 1992.

Implementation of the Motor Vehicle Air Conditioning (MVAC) Rule is a joint effort by the Stratospheric Protection Division (SPD) in the Office of Atmospheric Programs, the Stationary Source Compliance Division (SSCD) in the Office of Air Quality Planning and Standards, the Office of Enforcement (OE), the Air Program Offices in the Regions, and the Office of Regional Counsel (ORC). SPD is responsible for approving laboratories and technician certification courses, and determining if recover only or recycling equipment is substantially identical. They will maintain updated lists of accredited technician certification courses and approved equipment. SPD will coordinate outreach with the Regions. In addition, SSCD will conduct outreach from a compliance perspective. SSCD is responsible for providing guidance documents, such as the implementation plan, compliance strategy, and enforcement guidance; preparing applicability determinations; and coordinating and analyzing compliance with the Regions. In the beginning of this program, SSCD will supplement Regional inspections with inspections performed by Senior Environmental Employee (SEE) inspectors. The Regions are responsible for inspecting affected facilities, and determining compliance. The Regions will take the lead in enforcement actions, however Headquarters may also pursue enforcement actions. The ORC will provide legal support for the Regions. OE will provide legal support for SSCD. OE in conjunction with SSCD will develop and amend, as necessary, the penalty policy.

The Act does not give EPA the authority to delegate the enforcement of the section 609 regulation to State or local governments. Section 114 inspection authority, however, can be delegated to the States. Several States currently have State regulations similar to section 609 and their compliance programs include performing inspections. Regions can designate State and Local inspectors as EPA authorized representatives in most States. We can work with States to gain compliance through their MVAC

programs, but we cannot delegate the MVAC enforcement program to them.

This document supplements two previous documents, the implementation plan and the compliance strategy, and is to be used in conjunction with the penalty policy developed by OE and SSCD. The enforcement guidance clarifies the responsibilities and compliance options for implementing the compliance strategy. However, it does not detail every possible compliance situation.

REGULATED COMMUNITY

Any establishment that services motor vehicle air conditioners for consideration or sells containers of refrigerant weighing less than twenty pounds is subject to this regulation.

VIOLATIONS

There are two categories of violations for the servicing of motor vehicle air conditioners and the sale of small cans of refrigerant; those that defeat the purpose of section 609, termed integrity of the regulation or substantive violations, and recordkeeping violations.

At service establishments violations include: failure to have and use approved recover/recycle or recover only equipment, and/or failure to have technicians properly trained and certified. Recordkeeping violations include: failure to keep records of where recovered refrigerant is sent off-site, failure to submit a small business certification and/or an equipment owner's certification, or failure to maintain or submit complete or accurate information.

Small can sales violations include: selling small cans to anyone other than a certified technician and failure to post a sign explaining the sales restriction. The recordkeeping violation is selling small cans to a distributor and not obtaining a signed statement that the cans are for resale only to a certified technician. To determine whether a small can retailer is in compliance with the regulations, an inspector must attempt to purchase a small can of refrigerant without showing or claiming to have technician certification. If the business does not make any attempt to request certification, and sells the small can(s) to the inspector, the business has violated the Act and the regulations.

Other violations include: an unapproved course issuing technician certifications, and an unaccredited laboratory approving equipment.

COMPLIANCE ACTIONS

Response to Noncompliance Tips

When reports are received about businesses that may not be in compliance with the regulation, a letter is sent to the alleged violator and the complainant, and an inspection should be scheduled. SSCD has developed tip sheets for recording complaints, "response to tip letters," and complainant thank you letters. These example documents were sent in a memorandum entitled "Enforcement Documents for Sections 608 and 609 of the Clean Air Act" dated August 21, 1992.

The tip sheet records the name, address, and owner of the business that is being reported; the name, address, and affiliation of the complainant, unless they wish to remain anonymous; the type of violation (recycling or small can); and the details of the complaint. Once a tip is received a "response to tip letter" is sent to the possible violator, a complainant thank you letter is sent, and an inspection is scheduled.

The "response to tip letter" notifies the establishment that the EPA has received information that they may not be in compliance. The letter identifies the possible penalties and states that the business may be inspected in the future. It includes the requirements of the Act and the regulations, and informs the business how to comply. In some cases it may be appropriate to combine this letter with a section 114 request for information.

The complainant letter can be sent if the complainant is identified. The purpose of this letter is to thank the complainant for their concern and assistance in protecting the stratospheric ozone, briefly inform them of all the requirements, and let them know we are following up on their tip. All information that could lead to the identity of the complainant will be held confidential when requested.

Tips should be followed up with an inspection whenever possible. In some instances, such as a tip in a remote location, it may not be possible to respond with an inspection. Tips that should be given priority in scheduling inspections are those received from a reliable source, a potentially large violation, a repeat violation, or where there is a geographic concentration of tips.

Inspections

Inspections will be performed by the Regions with some additional inspections performed by Headquarter's SEE inspectors. Primarily service facilities and small can retailers will be inspected. The service facility inspections will predominately be level one inspections that check for approved equipment and certified technicians. There will also be a more in depth level two inspection at service facilities that will examine invoices. Level one inspections will be conducted at small can retail sales outlets because recordkeeping requirements for the sale of small cans of refrigerant are minimal. The compliance strategy describes all of these inspections in detail. Inspections will initially be targeted in large cities and suburban areas and at national, regional, or high volume businesses. After compliance is analyzed, inspections can be targeted to the sectors of the regulated community that have compliance problems.

CAA Section 114 Request for Information

A section 114 request for information letter is sent to a service facility or small can retailer to gather information in order to determine compliance. Section 114 letters can be sent in response to a tip that an establishment is not in compliance when an inspection cannot be scheduled. A section 114 letter can also be used after an inspection to gather information that may have been lacking in an inspection report, to discover possible additional violations, or to assess the extent of the violation for a possible enforcement action.

However, if a Region wants to send section 114 letters to the regulated community as a whole or a segment of the regulated community to simply gather information on compliance, Office of Management and Budget (OMB) approval is required. The Agency can only send a total of nine general MVAC requests a year without OMB approval.

Enforcement Actions

This guidance will discuss four types of enforcement responses; Administrative Order (AO), Administrative Penalty Order, Civil Judicial, and Criminal. There are two types of letters that may be sent after an inspection or section 114 request for information and prior to the issuance of an Administrative Penalty Order. They are a Finding of Violation (FOV) and an AO. In a section 609 enforcement action, an AO that includes an FOV will be appropriate in many cases.

Administrative Order

If the source remains in violation of the Act and the regulations the first enforcement response should be the issuance of an AO. The AO is appropriate for many MVAC cases because most violations can be corrected by an order to comply.

A FOV notifies the party that they are in violation. The Agency is not required to issue FOV's for violations of section 609. It is common practice in some Regions to use an FOV alone, but we recommend it in combination with an AO. The AO will describe the finding of violation(s) and order the establishment to comply with the regulations. The establishment can come in to compliance by having their technicians trained and certified by an EPA approved training course, purchasing approved refrigerant recover/recycling or recover only equipment, or stopping the sale of small cans of refrigerant to anyone other than certified technicians. A sample finding of violation letter was included in the package of compliance responses sent to the Regions on August 21, 1992. We suggest modifying that letter to order the facility to correct the violation.

CAA Section 113(d): Administrative Penalty Order

Administrative Penalty Orders will probably be the most commonly used enforcement response for MVAC cases. Administrative penalty cases are initiated with an Administrative Penalty Order. To assess administrative penalties, the date of the first alleged violation must be less than 12 months from initiation of the enforcement action and the penalty assessed must be less than \$200,000. Administrative penalties are preferable because they make for faster resolution of cases and are less resource intensive for both the Agency and the respondent than civil judicial proceedings.

CAA Section 113(b): Civil Judicial Actions

Civil judicial enforcement actions can be taken in any case as long as it is less than five years from the date of the alleged violation. Civil Judicial cases must be brought if the penalties sought exceed \$200,000, or the initiation of the enforcement action is more than 12 months from the first alleged date of violation, or obtaining compliance will take more than one year, and substantial court-supervised injunctive relief is required. Civil Judicial actions may require extensive post filing discovery. Section 113(b) authority may be preceded by pre-referral negotiations. See Clean Air Act Compliance/Enforcement Guidance Manual, revised July 1987. Also see Process for

Conducting Pre-Referral Settlement Negotiations on Civil Judicial Enforcement Cases, April 13, 1988. Because the MVAC penalties will not usually exceed \$200,000 and compliance can be achieved relatively easily, it will be rare for this type of action to be taken.

CAA Section 113(c): Criminal Actions

To bring a criminal case, the defendant must have either knowingly committed the violation or knowingly given a false statement or certification. Due to the difficulty in proving an intentional violation, few criminal cases are expected.