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FACT SHEET

EPA Policy on Cross-Border Sales of "California" Vehicles

BACKGROUND

Under section 177 of the Clean Air Act, the State of New York implemented California vehicle emission standards for 1993 and later model year vehicles that belong to engine families which began production on or after November 22, 1992 and the State of Massachusetts implemented those California standards for 1995 and later model years. Because vehicles that are only certified to California standards do not necessarily meet all Federal requirements, their sale in other states has not historically been permitted.

With the adoption of California standards by states, cross border sales became a significant issue. Many dealers in section 177 states and dealers in states contiguous to those states conduct substantial sales across the state borders.

In an April 28, 1993 letter to Commissioner Adduci of the New York Department of Motor Vehicles, EPA explained that for the 1993 and 1994 model years it would permit the sale of California vehicles in California and New York to anyone under a "place of sale" policy.¹ Additionally, EPA explained that it would take no action to prevent dealers in states contiguous to New York from selling California cars to purchasers from any state. A subsequent Fact Sheet, dated July 2, 1993, explained the policy in more detail as it applies nationally:

FOR THE 1993 MODEL YEAR

In the State of California, manufacturers may introduce into commerce all California light-duty vehicles, light-duty trucks, and medium-duty vehicles. In the State of New York, however, manufacturers may only introduce into commerce those California light-duty vehicles and light-duty trucks from engine families that began production on or after November 22,

1 For the 1993 model year, this policy applied only to those vehicles for which initial production began on or after November 22, 1992 -- the date on which New York implemented California standards.

1992. Additionally, for those light-duty vehicles and light-duty trucks which may be introduced into commerce in New York, EPA will take no action to prevent manufacturers from introducing these light-duty vehicles and light-duty trucks into commerce in states contiguous to New York and California.

As a result, manufacturers may allow their dealers in California to sell California light-duty vehicles, light-duty trucks, and medium-duty vehicles to purchasers from any state. Manufacturers may also allow their dealers in New York and in states contiguous to New York or California to sell those California light-duty vehicles and light-duty trucks from the engine families that began production on or after November 22, 1992, to purchasers from any state.

FOR THE 1994 MODEL YEAR

Manufacturers may introduce into commerce all California light-duty vehicles and light-duty trucks in California and New York, and California medium-duty vehicles in California. Additionally, EPA will take no action to prevent manufacturers from introducing these light-duty vehicles and light-duty trucks into commerce in states that are contiguous to California or New York. EPA will also take no action to prevent manufacturers from introducing into commerce California medium-duty vehicles in states contiguous to only California.

As a result, manufacturers may allow their dealers in California, New York, and their contiguous states to sell California light-duty vehicles and light-duty trucks to purchasers from any state; and their dealers in California and its contiguous states to sell California medium-duty vehicles to purchasers from any state.

In a Federal Register Notice of July 22, 1993, EPA announced a public workshop, which was held on August 11, 1993. Testimony presented at the workshop as well as information submitted to public docket A-93-30 was reviewed to help formulate the policy for 1995 and later model years.

POLICY FOR THE 1995 MODEL YEAR

EPA had extended the 1994 policy described above to the 1995 model year, modifying it only to reflect the fact that Massachusetts implemented California vehicle emission standards for the 1995 model year. As a result, dealers in Massachusetts and its contiguous states could sell 1995 model year California vehicles to purchasers from any state.

However, EPA has recently received comments that dealers in the state of Maine, which does not border Massachusetts but at its closest point is only 17 miles away, would effectively be unable to trade vehicles with Massachusetts dealers, their largest trading partners, as they have in the past. Maine dealers' inability to continue trading with Massachusetts dealers could isolate Maine dealers, resulting in a disruption of the auto business in Maine. After discussing this issue with automobile manufacturers and dealer associations we have modified the 1995 Cross Border Sales Policy to include Maine with the states contiguous to Massachusetts.

Additionally, because of the February 19, 1994 decision of the United States Court of Appeals for the Second Circuit in the matter of Motor Vehicle Manufacturers Association of the United States, Inc., v. New York State Department of Environmental Conservation, the state of New York can not require manufacturers to sell 1995 model year California vehicles certified to the standards of California's Low-Emission Vehicle (LEV) program in New York. However, their LEV program has not been invalidated, merely rendered unenforceable for the 1995 model year. EPA does not believe that its cross border sales policy should be modified based on the court's decision, as such action could create considerable problems for manufacturers and dealers that may have already distributed California vehicles under the provisions of our existing policy. Manufacturers may continue to introduce all 1995 model year California light-duty vehicles and light-duty trucks into commerce in New York and its contiguous states.

Therefore, the policy for the 1995 model year is as follows:

Manufacturers may introduce into commerce all 1995 model year California light-duty vehicles and light-duty trucks in California, New York and Massachusetts; and California medium-duty vehicles in California. Additionally, EPA will take no action to prevent manufacturers from introducing these light-duty vehicles and light-duty trucks into commerce in states that are contiguous to California, New York or Massachusetts. (For the purpose of the 1995 model year Cross Border Sales Policy, Maine is included with the states contiguous to Massachusetts). EPA will also take no action to prevent manufacturers from introducing into commerce California medium-duty vehicles in states contiguous to only California.

As a result, manufacturers may allow their dealers in California, New York, Massachusetts and their contiguous states (including Maine) to sell any 1995 model year California light-duty vehicles and light-duty trucks, at any time, (on or after the effective date of the certificate of conformity) to purchasers

from any state. Manufacturers may also allow their dealers in California and its contiguous states to sell California medium-duty vehicles to purchasers from any state.

Because of the complex and dynamic situation surrounding the adoption of California standards by other states pursuant to Section 177 of the Act, EPA believes it is not appropriate to implement a policy extending longer than one model year at this time and we will issue a policy regarding the 1996 model year at a later date.

QUESTIONS AND ISSUES

PLEASE NOTE ANSWERS TO QUESTIONS 4, 6, 15, 16, and 17.

1. How does this new policy differ from current or previous policy?

Under a place of sale policy applicable through the 1993 model year, manufacturers could introduce into commerce California vehicles in California (or New York) for sale to anyone. Manufacturers could only introduce into commerce California vehicles in other states if the vehicles were to be titled, registered or principally used in California (or New York). This policy, though adequate when California was the only state involved, would have created a hardship for dealers in states contiguous to New York and, later, Massachusetts. Those dealers could only sell California vehicles to New York or Massachusetts residents while dealers across the borders in New York and Massachusetts could sell California vehicles to anyone.

For the 1994 model year, EPA had switched to a policy based on principal use. This policy permitted manufacturers to ship California vehicles to states other than California and section 177 states but would require their sale only to individuals who intended to principally use them in California or section 177 states. This policy was designed to allow dealers in contiguous states to continue cross border sales. Dealers on both sides of the section 177 state borders objected that this policy would require them to maintain double inventories of vehicles to participate in cross border sales.

Based on consideration of all the issues involved with the cross-border sale of California vehicles, EPA has determined that an expanded place of sale policy is most appropriate for the 1993, 1994 and 1995 model years.

2. When is this modified policy effective?

This policy became effective on April 28, 1993, for 1993 and 1994 model year vehicles. It is also effective for all 1995

model year vehicles. However, because New York implemented California standards late in the 1993 model year, the policy for the 1993 model year only applies to those few 1993 California families that are required to be sold in New York. (New York's law only requires that those 1993 California engine families that began initial production on or after November 22, 1992, be sold in New York.) Consequently, only a few 1993 engine families are affected.

3. What about 1996 and later model years?

EPA will make a decision about 1996 and subsequent model years at a later date.

4. What language will appear on the 1993, 1994 and 1995 certificates of conformity issued to manufacturers?

The certificate language for those few 1993 California families listed above and for all 1994 California families will appear as follows:

This certificate covers only those new motor vehicles which:...(3) are only introduced into commerce in the State of California or a State contiguous to California or in a State that, under the authority of Section 177 of the Clean Air Act, has adopted and placed into effect the California standards to which this engine family has been certified or a State contiguous to such a State; and (4) are labelled as belonging to said engine family/evaporative family.

For those 1993, 1994 certificates which were issued without this new language, certificates will be amended or corrected with the updated language.

The certificate language for all 1995 California families is as follows:

This certificate covers only those new motor vehicles which:...(3) are only introduced into commerce in the State of California or a State contiguous to California or in a State that, under the authority of Section 177 of the Clean Air Act, has adopted and placed into effect for this model year the California standards to which this engine family has been certified or a State contiguous to such a State; and (4) are labelled as belonging to said engine family/evaporative family.

Although 1995 model year certificates will not specifically mention the state of Maine, for the purpose of the 1995 model year policy, Maine is included with the states contiguous to Massachusetts.

5. What is the suggested Vehicle Emission Control Information label language?

The label language for the few 1993 model year California families and all 1994 model year California families is as follows:

This vehicle conforms to U.S. EPA regulations applicable to 199X new motor vehicles provided that this vehicle is only introduced into commerce in the state of California or a State contiguous to California or in a State that, under the authority of Section 177 of the Clean Air Act, has adopted and placed into effect the California standards to which this vehicle's engine family has been certified or a State contiguous to such a State.

The label language recommended for all 1995 model year California families is as follows:

This vehicle conforms to U.S. EPA regulations applicable to 1995 new motor vehicles provided that this vehicle is only introduced into commerce in the State of California or a State contiguous to California or in a State that, under the authority of Section 177 of the Clean Air Act, has adopted and placed into effect for this model year the California standards to which this vehicle's engine family has been certified or a State contiguous to such a State.

Due to the timing of the release of this cross-border sales policy, this label language for California vehicles is optional. The labels must at least reflect that the vehicle is a California vehicle. Again, the above statement is optional for the few 1993 families and all 1994 and 1995 families, however, the California Air Resources Board (CARB) may require the incorporation of additional language regarding compliance with California standards and regulations. Please contact Duc Nguyen of CARB's Certification Branch at (818) 575-6844 for more information.

6. What are the contiguous states?

For Massachusetts: Rhode Island, Connecticut, New York, Vermont, New Hampshire, and Maine

For New York: New Jersey, Connecticut, Massachusetts, Vermont and Pennsylvania

For California: Oregon, Nevada and Arizona

7. May manufacturers deliver California vehicles to these contiguous states?

Yes. Manufacturers have the choice of delivering California

or Federal vehicles to these contiguous state dealers. The objective of the modified policy is to allow dealers on both sides of the California and section 177 state borders to continue to engage in cross border transactions without the requirement of dual inventories. Dealers, of course, may elect to maintain dual inventories to satisfy customer demands.

8. May a manufacturer introduce into commerce a California vehicle in California, New York, Massachusetts or a contiguous state for sale to a resident of a different state, say Iowa?

EPA will take no action to prevent the sale of California vehicles from the few 1993 model year light-duty families or from any 1994 or 1995 model year light-duty family in California, New York, Massachusetts or their contiguous states to purchasers from any state.

In the 1993 model year, California medium-duty vehicles are only permitted to be sold in California to purchasers from any state. In the 1994 and 1995 model years, EPA will take no action to prevent the sale of these medium-duty vehicles in California or states contiguous to California to purchasers from any state. (See #10 below)

9. What is restricted?

Manufacturers may not introduce into commerce California vehicles in states that have not adopted and placed into effect California standards or are not contiguous to such states.

Exceptions will be made, however, if the vehicle being purchased is to be titled, registered, or principally used in New York, Massachusetts or California. This is the same exception that has existed with respect to California for the last decade. It allows an individual who is moving to a section 177 state from Minnesota, for example, and who needs a new vehicle to get there, to buy a California vehicle in Minnesota.

10. What about medium-duty vehicles certified to California standards?

CARB defines a medium-duty vehicle for purposes of California emission requirements as any pre-1995 heavy-duty vehicle having a manufacturer's gross vehicle weight rating (GVW) of 8,500 pounds or less, or any 1995 and later model year heavy-duty vehicle having a GVW of 14,000 pounds or less, or any low emission vehicle (LEV) having a GVW greater than 6000 pounds but less than 14,000 pounds. Manufacturers may elect to certify pre-1995 vehicles up to 10,000 pounds GVW as medium-duty vehicles. New York and Massachusetts did not adopt California standards for medium-duty vehicles therefore, these vehicles are not permitted to be introduced

into commerce in any state other than California and its contiguous states. The exception from #9 above still applies, however, if the medium-duty vehicle is to be titled, registered, or principally used in California.

11. What about sales into New York, Massachusetts or California of vehicles that do not meet California standards?

Federal regulations do not require the sale of California vehicles in California or section 177 states, however, individual states may prevent the registration of vehicles that do not meet California standards.

12. Can manufacturers deliver Federal vehicles to California, New York and Massachusetts?

There is no Federal prohibition against manufacturers delivering Federal vehicles to these three states, however, individual states may prevent the registration of these vehicles when California standards are in effect.

13. How does this affect warranty requirements?

State motor vehicle emissions warranty provisions are in addition to, and do not void or eliminate, the federal emissions warranties under §207 of the Act. A vehicle that is within the federal warranty period and subject to regulations issued under §202 of the Act is therefore covered by the federal emission warranties, notwithstanding valid adoption by a state of separate warranties. Under this situation, the Federal and California warranty provisions are concurrent, and all vehicles, even those sold in California, have Federal warranty provisions. For the 1993 and 1994 model years California is the only state which has California warranty provisions. California and Massachusetts have California warranty provisions for the 1995 model year. (New York did not adopt these provisions). Please contact Mr. J. Pat Childers of EPA's Field Operations and Support Division at (202) 233-9100 for more information.

14. Are there any new recordkeeping requirements?

There are no recordkeeping requirements for cross-border sales themselves. Manufacturers are responsible for all information and recordkeeping regarding California vehicles as described in Advisory Circular 86.

15. What about regulatory "holes" in the 1995 model year when the California vehicle emission standards are not in effect in New York and Massachusetts?

EPA's previous Fact Sheet (dated 12/3/94) addressed situations where, as a result of pending litigation, a section 177 state could not require California vehicles for part of the 1995 model year by continuing to **permit** manufacturers to introduce into commerce all 1995 model year California vehicles in California, New York, Massachusetts as well as their contiguous states (including Maine).

Recently, as a result of the decision of the United States Court of Appeals for the Second Circuit in the matter of Motor Vehicle Manufacturers Association of the United States, Inc., v. New York State Department of Environmental Conservation, California vehicles certified to the standards of California's LEV program are not required to be sold in New York for the 1995 model year. However, New York's program has not been invalidated, merely rendered unenforceable for the 1995 model year. Therefore, EPA does not believe its cross border sales policy should be modified as a result of this litigation. Manufacturers may continue to introduce all 1995 model year California light-duty vehicles and light-duty trucks into commerce in New York, California, and Massachusetts as well as their contiguous states (including Maine).

16. What about "drop shipments"?

EPA considers a "drop shipment" to be a type of sale in which a dealer will accept an order for a vehicle from an out-of-state customer, and the vehicle will be shipped directly to the customer via a local delivering dealer without the vehicle ever physically being in the selling dealer's inventory.

According to the language of EPA's policy, dealers located in California, a section 177 state, or any of their contiguous states (including Maine) can sell California vehicles to purchasers from any state. With respect to the Cross Border Sales Policy, we consider a "drop shipment" to be equivalent to a sale. Therefore, dealers located in the above states can "drop ship" California vehicles to purchasers from any state.

17. Where can I get further information?

Contact: Mitch Greenberg (EPA Engineer) 202-233-9269