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Regulators Investigating 2nd VW Computer Program on Emissions

By DANIELLE IVORY and KEITH BRADSHEROCT. 8, 2015

WASHINGTON — Federal and California regulators have begun an investigation into a second computer program in Volkswagen's diesel cars that also affects the operation of the cars' emission controls.

Volkswagen said that it had withdrawn 2016 models of its diesel cars from environmental certification in the United States because the company should have disclosed the software and sought regulators' approval, but had not done so.

The disclosure of the software was made in testimony by the head of Volkswagen's American unit, Michael Horn, before a House Energy and Commerce subcommittee hearing, and later confirmed by the Environmental Protection Agency and the California Air Resources Board.

The software qualifies under state and federal laws as a so-called auxiliary emissions control device — something that modifies the performance of emissions equipment. Volkswagen and regulators declined to say whether this software was intended to defeat emissions control tests, like the software that the automaker already admitted last month that it had installed in 11 million diesel cars since the 2009 model year.

"VW did very recently provide E.P.A. with very preliminary information on an auxiliary emissions control device that VW said was included in one or more model years," said Nick Conger, an agency spokesman. He added that federal and California regulators "are investigating the nature and purpose of this recently identified device."

Volkswagen is already struggling with the spiraling cost and growing damage to its image from last month's revelation that it had installed software to detect when a car was undergoing an emissions test and minimize harmful emissions. When not being tested, the cars would emit up to 40 times the allowable levels of pollution.

Volkswagen and regulators refrained from characterizing the second software program in any way. The automaker gave no indication of whether it was also devised to defeat emissions tests.

"In Volkswagen Group of America's recent discussions with the regulators, we described to the E.P.A. and C.A.R.B. that our emissions control strategy also included a software feature that should be disclosed to and approved by them," the automaker said.

Stanley Young, a spokesman for the California Air Resources Board, said the state agency was investigating the nature of the second device, but declined to provide specifics because Volkswagen's application "is still pending." Mr. Young said that while Volkswagen has withdrawn its 2016 application with federal regulators, it has not withdrawn the similar application filed with California regulators.

"We're still going through all the information they provided and determining the next step," he said.

Under normal circumstances, automakers are allowed to use the auxiliary emissions control devices under deals negotiated with regulators that provide for higher emissions in very specific circumstances (like going up a steep hill, or in very cold weather). But they must be disclosed.

Mr. Young said he could not comment on exactly when Volkswagen disclosed the existence of its auxiliary emissions control device, or A.E.C.D.

"What we don't know yet is if the 2016 A.E.C.D. is also a defeat device, or is a device that meets the guidance previously given by E.P.A.," said John German, a senior fellow specializing in emissions and efficiency technology at the International Council on Clean Transportation, the nonprofit group that first noticed that the real-world emissions of Volkswagen diesels in the United States were far above regulatory limits.

Federal regulators warned manufacturers of heavy-duty trucks in 1998 that it would strictly scrutinize any devices that interfered with the normal operation of emissions control equipment, after finding that they had installed systems similar to what Volkswagen disclosed last month in its diesel cars.

Dan Becker, the director of the Safe Climate Campaign at the Center for Auto Safety, a nonprofit Washington research group, said that Volkswagen's new admission was a potential violation of the law.

"They put it in their vehicles, and then they signed a certification petition to the regulator saying what they put in their vehicles and didn't mention it," he said. "It's certainly a material omission."

Lawmakers did not discuss Volkswagen's admission at length during the hearing. But Representative Fred Upton, Republican of Michigan, openly wondered if Volkswagen was skirting regulations in other ways. "If they were willing to cut corners here, what else have they done?" he asked.

In addition to disclosing the second investigation in his opening testimony, Mr. Horn of Volkswagen laid out the automaker's plans to fix the cars currently affected and cautioned the panel that owners might have to wait a year or two.

Most of the more than 480,000 affected cars in the United States will need a "major fix," he said, including a hardware and software change. That repair, which would be applicable to almost 70 percent of those vehicles, may consume as much as 10 hours of work per car and might not get started until next year. The remaining vehicles are expected to be fixed next year, he said.

“This is pretty shocking for people,” said Representative Jan Schakowsky, a Democrat of Illinois, expressing dismay at the scandal and demanding a specific timeline for fixes. “Asking customers for patience is really just not sufficient.”

Some lawmakers asked Mr. Horn why Volkswagen did not replace the vehicles — a costly proposition — and, although he emphasized repairs, he said Volkswagen might consider an option like a buyback.

“Our plan is not to buy back the inventory,” he said. “Our plan is to fix the cars.”

Although Mr. Horn apologized for the deception and even said he felt deceived by the scandal, he came under withering criticism for not delivering a concrete deadline for fixing most of the cars, and not providing more details about how the scheme was conceived or who was responsible.

In response to questioning by Representative Joe Barton, Republican of Texas, Mr. Horn said that neither Volkswagen’s supervisory board nor its top executives ordered the emissions deception. Instead, he attributed the decision to “a couple of software engineers who put this in for whatever reason.”

After an incredulous Mr. Barton expressed doubts that top Volkswagen executives in Germany were unaware of the cheating before September, Mr. Horn did not argue.

“I agree it is very hard to believe,” he said.

“This was not a corporate decision,” Mr. Horn said. “This was something individuals did.” His comments echoed recent statements by Volkswagen’s new chief executive, Matthias Müller, who said that only a few employees at the company had been aware of the cheating.

Also on Thursday, German investigators searched Volkswagen’s headquarters in Wolfsburg, Germany, and elsewhere. State prosecutors in Braunschweig said in a statement that they were looking for documents and data storage that would give them clues as to who might have been responsible for the decision to install the software that led to the emissions cheating.

Mr. Horn deflected demands by the House subcommittee for more information. He told lawmakers that, as the chief of Volkswagen’s American unit, he could not make promises for Volkswagen headquarters to turn over documents. He noted that there were “quite a number of people above me.”

Volkswagen has been asked to turn over documents to the committee by Tuesday.

In addition to Mr. Horn, two officials from the E.P.A. testified before the panel on Thursday, to a less hostile reception. One of them, Christopher Grundler, director of the Office of

Transportation and Air Quality, acknowledged that the agency had failed to detect the cheating in the first place — it was found by the International Council on Clean Transportation in conjunction with a laboratory at West Virginia University.

“We’ve learned from this episode, for sure,” he said. “We wish we had found it sooner.”

Danielle Ivory reported from Washington and Keith Bradsher from New York. Aaron M. Kessler contributed reporting from Washington and Melissa Eddy from Wolfsburg, Germany.

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