



United States
General Accounting Office
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Office of the General Counsel

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November 4, 1996

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: Final Regulations for Revisions to the Federal Test Procedure for Emissions from Motor Vehicles

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Environmental Protection Agency, entitled "Final Regulations for Revisions to the Federal Test Procedure for Emissions from Motor Vehicles" (RIN: 2060-AE27). We received the rule on August 29, 1996. It was published in the Federal Register as a final rule on October 22, 1996. 61 Fed. Reg. 54851.

The final rule revises the tailpipe emission portions of the Federal Test Procedure for light-duty vehicles and light-duty trucks. A new Supplemental Federal Test Procedure has been added to address areas not represented in the current procedures including aggressive (high-speed and/or high acceleration) driving behavior, rapid speed fluctuations, driving behavior following startup and use of air conditioning. Also included is a new set of requirements to more accurately reflect real road forces on the test dynamometer.

Enclosed is our assessment of the Environmental Protection Agency's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5

with respect to the rule. Our review indicates that the Environmental Protection Agency complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy
General Counsel

Enclosure

cc: Thomas E. Kelly, Director
Office of Regulatory Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"FINAL REGULATIONS FOR REVISIONS TO THE FEDERAL TEST PROCEDURE
FOR EMISSIONS FROM MOTOR VEHICLES"
(RIN: 2060-AE27)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) has conducted a cost and benefit analysis regarding the final rule which is contained in the Regulatory Impact Analysis.

EPA used two scenarios in arriving at the estimated cost of test facilities implementing the Supplemental Federal Test Procedure. One is the use of air conditioning simulation and the second is for the use of full environmental cells for air conditioning testing. The analysis found an annual cost of \$198.9 million associated with the simulation scenario or a cost of \$13.26 per vehicle. Under the full environmental cell scenario, the estimated annual cost would be \$244.5 million or \$16.30 per vehicle. These amounts include the cost of recalibration, redesign, mechanical integrity testing, certification durability demonstration, annual certification, test facility and vehicle hardware.

The environmental benefits EPA estimates will be a per vehicle lifetime emission reduction of 4.4 pounds of nonmethane hydrocarbons, 277 pounds of carbon monoxide and 23.5 pounds of oxides of nitrogen.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

EPA has determined that the final rule will not have a significant economic impact on a substantial number of small entities. The automobile manufacturers regulated by the rule do not qualify as small entities within the meaning of the Regulatory Flexibility Act. Therefore, neither an initial nor final regulatory flexibility analysis was performed.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Based on the cost benefit analysis performed by EPA, the rule will not impose an intergovernmental mandate because there are no enforceable duties on State, local

or tribal governments. However, the rule will impose a mandate on the private sector in excess of \$100 million in any one year.

EPA has prepared both a qualitative and quantitative assessment of the benefits and costs of the rule in the Regulatory Impact Analysis.

EPA has considered numerous regulatory alternatives to the final provisions of the rule, which are discussed in both the preamble to the final rule and the Regulatory Impact Analysis, but has determined that the requirements expressed in the final rule constitute the most cost-effective and least burdensome alternative that would meet the mandate of section 206(h) of the Clean Air Act.

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

Instead of the notice and comment procedures in the Administrative Procedure Act, the EPA promulgated this rule using the procedures, which have similar notice and comment requirements, contained in section 307(d) of the Clean Air Act, as amended. (42 U.S.C. § 7607(d)). The use of these procedures regarding rules pertaining to the promulgation or revision of regulations and test procedures for new motor vehicles or engines is mandated by section 307(d)(1)(K) of the Clean Air Act.

EPA published a Notice of Proposed Rulemaking on February 7, 1995 (60 Fed. Reg. 7404), and conducted a public hearing on April 19 and 20, 1995 on the proposed rule. The comment period was to close on May 22, 1995, but was extended until July 19, 1995, because additional time was necessary to gather and analyze data relating to the rule.

The preamble also notes (61 Fed. Reg. 54853) that additional comments, data and analyses were received after the close of the comment period and that the EPA considered such information in developing test procedures, cost estimates and lead time. Section 307(d)(4)(B)(i) permits EPA to put documents in the rulemaking docket after the comment period is over. This type of addition to the record after the close of the comment period and the need to reopen the comment period are discussed in Sierra Club v. Costle (657 F. 2d 298 at 392–400 (1981)), where the court held such action was not required because there was adequate time for response. We have been advised by EPA that the additional comments and data were added to the public docket between August and December 1995 and therefore at least 6 months was available for responses or objections to be filed.

The preamble to the final rule discusses the comments received and any action taken as a result of the comments.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The rule contains information collection requirements which are subject to the Paperwork Reduction Act. EPA has submitted an Information Collection Request (ICR) document to the Office of Management and Budget for approval.

The ICR contains the information required by the Act including the reasons for the collection of the information, the type of information and an estimate of the burden imposed on respondents. The burden of the requirement (testing, recordkeeping and reporting requirements) is estimated to average 566 hours annually for a typical manufacturer.

EPA has solicited comments on the proposed information collection requirements to be sent to both EPA and OMB for consideration during the approval process. The information collection requirements will not be effective until OMB approval is obtained.

Statutory authorization for the rule

The EPA has cited sections 202, 206, 208 and 301 of the Clean Air Act, as amended. (42 U.S.C. §§ 7521, 7525, 7542 and 7601). In particular, section 206(h) of the Act (42 U.S.C. § 7525(h)) requires the Administrator of the EPA to review and revise the regulations regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration and altitude.

Executive Order No. 12866

OMB reviewed the rule under Executive Order No. 12866 as a "significant regulatory action." The Office of Information and Regulatory Affairs of OMB approved the final rule as complying with the requirements of the Order based on the information supplied by EPA, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

In its submission, EPA did not identify any other statute or executive order imposing procedural requirements relevant to the final rule.