



Office of the General Counsel

B-274798

October 17, 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: Control of Air Pollution: Final Rule for New Gasoline Spark-Ignition Marine Engines; Exemptions for New Nonroad Compression-Ignition Engines at or above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts

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 "Control of Air Pollution: Final Rule for New Gasoline Spark-Ignition Marine Engines; Exemptions for New Nonroad Compression-Ignition Engines at or above 37 Kilowatts and New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts" (RIN: 2060-AE54). We received the rule on September 10, 1996. It was published in the Federal Register as a final rule on October 4, 1996. 61 Fed. Reg. 52087.

The rule regulates exhaust emissions from new spark-ignition (SI) gasoline marine engines including outboard engines, personal watercraft engines and jet boat engines beginning with the 1998 model year and the rule is fully phased-in by the 2006 model year. The regulation of these emissions became necessary under section 213(a)(3) of the Clean Air Act, as amended, when EPA found that these nonroad engines were significant contributors to ozone or carbon monoxide concentrations in more than one nonattainment area. A nonattainment area is a

specified area that has failed to attain the applicable National Ambient Air Quality Standard for a given pollutant. In addition, the rule exempts new nonroad compression-ignition engines at or above 37 kilowatts and new nonroad spark-ignition engines at or below 19 kilowatts.

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: Mr. 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
"CONTROL OF AIR POLLUTION: FINAL RULE FOR NEW GASOLINE SPARK-
IGNITION MARINE ENGINES; EXEMPTIONS FOR NEW NONROAD
COMPRESSION-IGNITION ENGINES AT OR ABOVE 37 KILOWATTS AND NEW
NONROAD SPARK-IGNITION ENGINES AT OR BELOW 19 KILOWATTS"
(RIN: 2060-AE54)

(i) Cost-benefit analysis

EPA has prepared an analysis of the costs and benefits of the rule which is contained in the Regulatory Impact Analysis. The analysis explains the methodologies and the reasons behind their use in arriving at the cost and benefits of the rule.

In achieving the rule's goal of a 75 percent reduction in hydrocarbon emissions by the year 2025, such a reduction will also contribute to the reduction of volatile organic compounds and ozone in ozone attainment areas. The EPA finds that the benefits of a 590,254 tons of hydrocarbons reduced per year by the rule more than offsets the increase in oxides of nitrogen of 25,440 tons per year which will result.

The annualized costs associated with the rule in 2006 will exceed \$370 million, which is 7 percent of the projected expenditure on these engines in that year. The average increase in cost for the engines would be 10-15 percent or \$700 per engine. The analysis contains tables which show the annual cost from 1998, the effective date of the rule, until the year 2051, by which the EPA expects the entire existing fleet of these engines to have been replaced, to be \$15.5 million to \$336.2 million, respectively.

The cost-effectiveness of the rule has been calculated by EPA to be approximately \$1,000 per ton of hydrocarbons reduced.

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

In the preamble to the Notice of Proposed Rulemaking (59 Fed. Reg. 55966), EPA concluded that the rule would have a significant impact on a substantial number of small entities, especially in view of EPA's implementation of the Act, which considers any impact a significant impact.

However, in the preamble to the final rule, EPA has now determined that the rule will not have a significant impact on a substantial number of small entities. This change is due to the deletion from the rule of the regulation of stern drive and inboard engines, which are mainly manufactured by small entities. EPA believes that, at most, there are only two firms which manufacture outboard or personal watercraft and jetboat engines that qualify as small entities.

EPA notes in the preamble to the final rule that it has reduced the burdens where possible on these small entities following consideration of the comments received. EPA states that it has taken into consideration the potential competitive impact on these firms and has eased the burden by permitting averaging emissions across product lines, reduced production line testing, reduced in-use testing, simplified certification procedures and allowing manufacturers to purchase emission credits from the market place as an alternative to employing control technologies to meet the standard.

(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 the Summary and Analysis of Comments, 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 213(a)(3) 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 nonroad engines or vehicles is mandated by section 307(d)(1)(R) of the Clean Air Act.

EPA published a Notice of Proposed Rulemaking on November 9, 1994 (59 Fed. Reg. 55930) requesting comments on the proposed rule. On February 7, 1996, EPA published a Supplemental Notice of Proposed Rulemaking (61 Fed. Reg. 4600) to refine some of the proposals made in the prior notice and to respond to comments which had been received. In the preamble to the final rule (61 Fed. Reg. 52090), EPA discusses the changes made in the proposed rule in finalizing the rule and advises that the significant comments received and EPA's responses thereto are available to the public in a Summary and Analysis of Comments document.

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

The rule contains information collection requirements which are subject to the Paperwork Reduction Act. EPA originally submitted eight information collection requests (ICRs) to the Office of Management and Budget (OMB) for approval under the Act in connection with the Notice of Proposed Rulemaking. OMB originally denied all eight requests but subsequently approved two of the requests. EPA has resubmitted all eight requests based on reduced reporting and recordkeeping requirements resulting from changed requirements in the final rule. EPA notes that it has taken steps to reduce the administrative burden as much as possible and in the final rule estimates that the burden for the collection of information under all eight ICRs would average 6,900 hours annually for a typical manufacturer.

The ICRs contain 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. 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 of the rule will not be effective until OMB approval is obtained.

Statutory authorization for the rule

The EPA has cited sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended, (42 U.S.C. §§ 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550 and 7601(a)). In particular, section 213 of the Act (42 U.S.C. § 7547) requires the Administrator of EPA to regulate emissions from nonroad engines and vehicles and to issue regulations containing standards applicable to emissions from these categories of new nonroad engines and vehicles.

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.