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Office of the General Counsel

B-277027

June 20, 1997

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: New Motor Vehicles and New Motor Vehicle Engines Air Pollution Control: Voluntary Standards for Light-Duty Vehicles; Final Rule

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "New Motor Vehicles and New Motor Vehicle Engines Air Pollution Control: Voluntary Standards for Light-Duty Vehicles; Final Rule" (RIN: 2060-AF75). We received the rule on May 14, 1997. It was published in the Federal Register as a final rule on June 6, 1997. 62 Fed. Reg. 31192.

The rule provides the main regulatory framework for the National Low Emission Vehicle program and creates the means whereby automobile and light-duty truck manufacturers can volunteer to comply with tailpipe standards that are more strict than EPA can mandate at this time. The rule is the result of the Ozone Transport Commission (OTC) recommendation that EPA mandate a low emission vehicle program based on the California program. The OTC consists of the Governor (or

designee) of each state in the Ozone Transport Region (OTR),<sup>1</sup> the EPA Administrator (or designee), the Regional EPA Administrator (or designee), and an air pollution control official representing each state. Without a national program, each of the OTC states would adopt a state-by-state program, mostly based on the California program, unless a state could show it could meet the Clean Air Act requirements by some other means. The remaining 37 states would be subject to the requirements of the current Clean Air Act standards at least until model year 2004.

According to EPA, these regulations and other actions taken by EPA substantially harmonize federal and California motor vehicle standards, and once a manufacturer opts into the program, enforcement would be the same as any other federal motor vehicle pollution control program. The *quid pro quo* for manufacturers opting into the program and subjecting themselves to the mandates of the regulation is regulatory stability and the need to meet only one set of nationwide standards to which vehicles can be designed, manufactured, and tested. Although the rule is made effective on August 5, 1997, because it is voluntary it cannot be implemented until the OTC and the manufacturers reach final agreement on certain remaining issues.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact Alan Zuckerman, Assistant General Counsel, at (202) 512-4586. 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.

Sincerely yours,

Robert P. Murphy  
General Counsel

Enclosure

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

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<sup>1</sup>The OTR is made up of northeastern states: Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, the northern portion of Virginia, and the District of Columbia.

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES  
AIR POLLUTION CONTROL: VOLUNTARY STANDARDS  
FOR LIGHT-DUTY VEHICLES; FINAL RULE"  
(RIN: 2060-AF75)

(i) Cost-benefit analysis

The EPA included an analysis of the costs and benefits of a national low emission vehicle program with its submission to this Office. That analysis shows an annual estimated cost (vehicle price increases) of the national program for states other than California of \$950 million, as opposed to the \$350 million annual cost for the OTC program alone. Although the national program and the OTC program would appear to achieve the same pollution reduction in the OTR, it would do so at a *lower per vehicle cost* (\$76 per vehicle) based on national sales volumes as opposed to the \$84 per vehicle cost for the sales volumes in the OTR. Because the EPA has no authority to change the current Clean Air Act standards before model year 2004, implementation of the voluntary program will result in substantially reduced exhaust pollutants nationwide earlier than could otherwise be achieved because of the more stringent standards of this rule. The benefits of these reductions do not appear to have been monetized in the analysis.

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

EPA has concluded that it was not necessary to prepare a regulatory flexibility analysis because the rule only affects motor vehicle manufacturers, a group that is not comprised of a substantial number of small businesses.

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

Although the rule qualifies as a covered rule within the meaning of the Unfunded Mandates Reform Act (Act), it appears not to qualify as either a federal inter-governmental mandate or a federal private sector mandate because it results in "a duty arising from participation in a voluntary Federal program" (Section 421(5)(a)(i)(II) and (7)(A)(ii) of the Congressional Budget and Impoundment Control Act of 1974 as added by Pub. L. 104-4 § 101(a)(2) (1995)).

As a consequence, EPA did not prepare the statements required by the Act. EPA did, however, prepare a regulatory impact analysis which it furnished to this Office.

(iv) Other relevant information or requirements under acts and executive orders

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

The rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on October 10, 1995, 60 Fed. Reg. 52734, and comments were requested. The preamble states that numerous comments were received and a widely attended public hearing was held on November 1, 1995. EPA avers that it fully considered all of the timely received public comments and its responses to significant comments are either contained in the preamble or included in the public docket.

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

The rule contains information collection requirements which are subject to the Paperwork Reduction Act. EPA submitted the information collection request to OMB, which has not yet approved it.

Statutory authorization for the rule

The agency cites the Clean Air Act, 42 U.S.C. §§ 7521-7525, 7541, 7542, and 7601.

Executive Order No. 12866

The EPA submitted the rule to OMB for review under Executive Order 12866 as a "significant regulatory action." The agency reports that any changes made in response to OMB suggestions or recommendations will be documented in the public record.