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July 16, 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: Regulation of Fuels and Fuel Additives: Certification Standards for
Deposit Control Gasoline Additives

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, entitled "Regulation of Fuels and Fuel Additives: Certification Standards for Deposit Control Gasoline Additives" (RIN: 2060-AG06; FRL# 5528-5). We received the rule on June 28, 1996. It was published in the Federal Register as a final rule on July 5, 1996. 61 Fed. Reg. 35309.

This rule establishes a certification program for detergent additives used to control the formation of deposits in gasoline engines. This certification program requires the use of detergents in most gasolines used in the United States as mandated by the Clean Air Act Amendments of 1990 and replaces an interim program which began on January 1, 1995. The final rule contains standardized test procedures and performance standards to ensure that detergent gasolines provide an effective level of protection against certain engine deposits.

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
"REGULATION OF FUELS AND FUEL ADDITIVES: CERTIFICATION STANDARDS
FOR DEPOSIT CONTROL GASOLINE ADDITIVES"
(RIN: 2060-AG06; FRL# 5528-5)

(i) Cost-benefit analysis

As discussed below, the Environmental Protection Agency (EPA) determined that this final rule was a "significant regulatory action" based on an annual economic impact of \$100 million or more under Executive Order 12866 and submitted to the Office of Management and Budget the required regulatory impact analysis which contains an analysis of the costs and benefits of the rule.

The total producer costs estimated by EPA including the costs of certification, addization of the detergents, recordkeeping and enforcement through the year 2000 is almost \$704 million. The cost to the average consumer, if all the cost of the detergent is passed along to the consumer anew, even by those producers who already sell fully additized gasoline, would be \$6.00 per year.

The benefits to be gained in air quality were calculated by EPA for the first six years (including the interim program) to be reductions of 125,000 tons of hydrocarbons, 2,388,000 tons of carbon monoxide and 450,000 tons of nitrogen oxide. Increased fuel economy achieved by a reduction of engine deposits is estimated to be over \$295 million for the same time period. While EPA anticipates there will also be vehicle maintenance benefits, sufficient data was not available to quantify the benefits.

This analysis was revised when it was determined that the interim program, which began on January 1, 1995, would last 30 months rather than 18 months and there were changes in the estimated cost of deposit control testing and the addition, in the final rule, of a required deposit demonstration test to qualify test fuels for certification testing purposes.

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

The impact of this rule on small entities was considered in a regulatory flexibility analysis under section 603 that was summarized in the preamble of the interim program (59 Fed. Reg. 54705) and the entire analysis, which was included in the regulatory impact analysis, was available for review in EPA's public docket. The

preamble to the final rule addresses changes made to the regulatory impact analysis, as discussed under the cost-benefit analysis section above, and the impact on small entities.

Following this analysis, EPA has concluded and certified that the rule will not have a significant economic impact on a substantial number of small entities. The analysis states that the industry affected by the rule includes numerous business entities in the chain of gasoline production and the business size considered to be a small entity varies from 100 to 1500 employees under the SIC Codes and size standards of the Small Business Administration. Therefore, the impact of the rule varies based on the type of business and its place in the chain of production and distribution. However, the overall impact is expected to be modest, even for those industries most heavily impacted, and for small additive and additive injection equipment manufacturers, the rule could result in additional economic opportunities through increased sales. The analysis also discusses alternative approaches which were considered by EPA but were found lacking because they did not either significantly reduce the burden on small entities or would have jeopardized the program's projected air quality benefits.

According to an official at EPA, publication of the certifications in the Federal Register in connection with the interim program and the final rule was treated as providing notice under section 605(b) to the Small Business Administration's (SBA) Chief Counsel for Advocacy. The SBA has confirmed that some agencies follow this practice without objection from the SBA.

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

According to the EPA, the final rule will not impose any Federal mandates, as defined in Title II of the Act, on State, local or tribal governments nor any enforceable duties on those governmental entities. Therefore, sections 203 and 204 of the Act are not applicable.

However, the rule does contain Federal mandates that will result in the expenditure of \$100 million or more in any one year for the private sector. The EPA, in the preamble to the final rule, states that the certification program represents the least costly, most cost-effective approach to achieving the air quality goals by relying on the cost-benefit analysis performed in connection with Executive Order No. 12866, as permitted by section 202 (b) and (c) of the Act. 61 Fed. Reg. 35355.

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

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

The rule complied with the notice and comment rulemaking procedures of the Act, 5 U.S.C. § 553. This is the fourth rulemaking action which EPA has undertaken to implement the requirement contained in Section 211(l) of the Clean Air Act Amendments of 1990.

On December 6, 1993, a Notice of Proposed Rulemaking was published. 58 Fed. Reg. 64213. Subsequently, on October 14, 1994, the rule for the Interim Detergent Program was published. 59 Fed. Reg. 54678. In order to obtain more comments regarding the possible requirement for control of combustion chamber deposits in the final rule and to seek more public input in other areas involving the certification testing and various implementation and enforcement provisions, a Notice of Reopening of the Comment Period was published on December 28, 1994.

The EPA received 80 written comments and six oral presentations were made at a public hearing held by EPA. The EPA's response to the comments received are summarized in the preamble to the final rule and a detailed presentation and evaluation of the comments received are contained in a separate "Summary and Analysis of Comments." EPA Docket Item V-B-02. Comments regarding enforcement issues and questions raised by the regulated industry were addressed by EPA in four "Detergent Rule Question and Answer Documents." EPA Docket Nos. IV-C-08, IV-C-09, IV-C-10, IV-C-11.

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

The rule contains information collection requirements which will allow EPA to determine that detergent additives which are effective in controlling deposits are used and that emission control goals are realized. The information to be submitted is of various types and complexities depending upon the role of the submitter (additive manufacturers, refiners, terminals, truckers or retailers) in the manufacturing and distribution process. The preamble to the final rule sets forth the reasons for collecting the information and the burden estimates for the various parties.

The EPA has certified under section 3506(c)(3) of the Act and submitted the information collection requirement to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act and has solicited comments regarding the proposed collection requirements to be submitted to both EPA and OMB. The collection requirement will not be effective until OMB approval is obtained. Therefore, the information collection requirements contained in the

interim program (already approved by OMB) will continue to be effective until replaced by the requirements contained in the final rule.

Statutory authorization for the rule

Section 211(l) of the Clean Air Act Amendments of 1990 (Pub. L. 101-549) provided that the Administrator of EPA shall promulgate a rule establishing specifications for detergent additives to implement the requirement, also contained in section 211(l), that, effective January 1, 1995, no gasoline may be sold or dispensed which does not contain additives to prevent the accumulation of deposits in engines or fuel systems.

Executive Order No. 12866

Based on its economic impact, the rule was determined to be a "significant regulatory action" within the meaning of Executive Order No. 12866. Consistent with the Executive order, the rule was initiated through an advance notice of proposed rulemaking and a regulatory impact analysis was included in the Interim Program notice in the Federal Register. The analysis was forwarded to the Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) for its consideration and comments as contemplated by the Order. OIRA suggested no changes in the rule but OIRA had EPA supply more elaboration in the preamble to the final rule concerning the deposit control test standards and the retention of a 5 percent flow loss performance standard rather than the industry supported 10 percent flow loss.

EPA did not identify any other statutes or Executive orders imposing requirements relevant to the rule.