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THE WHITE HOUSE
WASHINGTON

RBC HAS SEEN

July 20, 1976

*Dick
This is the
Russ Train memo I spoke
to you
about
Jim Cannon*

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: WILLIAM F. GOROG
FROM: JAMES E. CONNOR *JEC*
SUBJECT: Selective Enforcement Audit (SEA)
Procedures

The President has reviewed your memorandum of July 19th on the above subject and has approved your recommendation not to object to issuance of the SEA program, but to direct Russell Train to combine the certification and SEA programs to prevent bureaucratic duplication. He further approved the recommendation to advise the Administrator to do an analysis of the results of the SEA program after it has been in effect for twelve months, the purpose being to establish the basis for either discontinuing the SEA program or commencing phase out of the certification program.

Please follow-up with the necessary action.

cc: Dick Cheney
Bill Seidman
Jim Cannon

THE WHITE HOUSE

WASHINGTON

July 19, 1976

MEMORANDUM FOR THE PRESIDENT

THROUGH:

L. WILLIAM SEIDMAN AND JAMES CANNON

FROM:

WILLIAM F. GOROG

SUBJECT:

Selective Enforcement Audit (SEA) Procedures

In response to your request for a review of the SEA procedure which would be applied by the Environmental Protection Agency to the automobile industry, I have concluded a series of meetings with EPA, OMB and industry representatives, held to determine if the issues involved could be resolved to the satisfaction of all concerned.

BACKGROUND

EPA first proposed SEA regulations in December of 1974. Such regulations were authorized by the Clean Air Act of 1970 in order to allow the EPA Administrator to determine whether automobiles or engines being manufactured "do in fact conform" to emission standards. The Clean Air Act of 1970 authorized the use of SEA on a discretionary basis, while mandating four other enforcement programs for dealing with emissions control. These include:

- a. Certification of emission control systems prior to production (operational since 1971);
- b. Production warranty (promulgation in process);
- c. Five-year, 50,000-mile performance warranty (development in process);
- d. Recall authority (operational as needed).

The proposed regulations would authorize EPA to order manufacturers to select and test vehicles in accordance with a sampling plan devised by EPA. EPA estimates that a total of 800 cars per model year would be subjected to testing inclusive of the entire industry.

Upon review of EPA's initial SEA proposal, OMB determined that the regulation would cause a de facto tightening of emission standards, due to the stringency of test procedures involved. EPA altered the regulations from their original form, thereby solving the problem of de facto emissions. However, OMB believes that there are several important issues which remain to be resolved, and which stand as major criterion which to base a decision on SEA.

First, OMB questions whether SEA is in fact needed, as determined partially by whether or not currently produced autos conform to standards. 1976 manufacturer production data indicates that 95% of the vehicles produced would pass EPA's proposed test. EPA believes that this data is too limited to be representative of all model lines, that the validity of the data is questionable and that without an enforcement program, manufacturers would not maintain effective quality control. OMB maintains the position that the burden of proof rests with EPA in determining before promulgation of regulations that vehicles are being produced out of compliance. Furthermore, OMB holds that the combined use of the four mandated enforcement procedures provides sufficient incentive to the industry to produce vehicles that conform to emissions standards.

Second, OMB questions the cost-effectiveness of the proposed SEA regulations. EPA's latest estimates indicate that SEA is highly cost-effective; however, OMB believes that the assumptions concerning cost-effectiveness are highly speculative, maintaining that no definitive case has been made to support the institution of SEA.

Third, OMB questions the need for SEA in light of the present or impending use of the four mandatory enforcement programs intended by the Clean Air Act of 1970. EPA states that SEA is critical to the overall emissions control enforcement strategy because it guarantees improved quality control, while giving States that are in the process of implementing Inspection and Maintenance Programs proper assurance that vehicles do in fact meet standards at the point of manufacture. OMB, in turn, believes that the use of production warranties, which warrant against defects in manufacture and recall authority provide a full substitute to SEA.

In summary, the divergence of positions between OMB and EPA is consistent with divergent views of the Administration's position on regulatory reform. EPA's position as articulated by Russell Train, holds that the final decision on this issue should rest with EPA, since the policy of the Administration to date has been to allow the appropriate course in a regulatory matter to be determined by the respective Agency.

OMB holds that regardless of this view, any new regulations must be strongly justified on a cost/benefit basis.

LEGISLATIVE CONSIDERATIONS

On June 24, 1976, Senator Edmund Muskie sent a letter to Russell Train inquiring as to why selected enforcement audit procedures had not been finally promulgated, noting that five and a half years had elapsed since the passage of the Clean Air Act of 1970. The Muskie letter also stated that "because of the continued failure on the part of the Agency to exercise the authority intended by Section 206 (B)(1), the Committee on Public Works has included in the pending Clean Air Act Amendments a provision mandating the institution of an assembly-line test procedure." Muskie also asked Train to inform him immediately as to the date of promulgation for the SEA regulations and if such regulations were not to be promulgated, what the explanation for such decision was.

Russ Train believes that immediate issuance of SEA regulations might defuse efforts directed at mandating the institution of assembly line test procedure, thereby allowing EPA to operate on this issue with greater flexibility under the authorization of the 1970 Clean Air Act. The House Clean Air Act Amendments of 1976 do not contain a provision dealing with selective enforcement audit procedures.

PRESENT STATUS

I have been unable to resolve the conflict over this issue between OMB and EPA. It is my understanding from talking to Russ Train that he intends to transmit to the White House today a Memorandum outlining his intentions to promulgate SEA in its present form tomorrow, barring your objection. The White House Counsel's Office advises that while it would be unlawful for you to attempt to prevent issuance of an SEA program, you are empowered to direct the manner and duration of such a program.

RECOMMENDATION

That you do not object to issuance of the SEA program, but that you direct Russell Train to combine the certification and SEA programs to prevent bureaucratic duplication. You should also advise the Administrator that you want an analysis of results of the SEA program after it has been in effect for twelve months, the purpose being to establish the basis for either discontinuing the SEA program or commencing phase out of the certification program.

If you approve, the necessary action will be taken.

RR 7

Approve

Disapprove

THE WHITE HOUSE
WASHINGTON

This has been
coordinated with
Saidman, Lyman,
Cannon, Cavanaugh

Bill Grogan

Cannon and I
called Russ last
night about 7:00pm



United States
Environmental Protection Agency
Washington, D.C. 20460

cc: Schleede
Humphreys

July 19, 1976

The Administrator

MEMORANDUM FOR THE PRESIDENT

SUBJECT: EPA Auto Emissions Testing

On June 8, I had the opportunity to discuss with you EPA's proposed regulation to establish assembly line emission testing requirements for auto vehicles (referred to as the SEA regulations). The regulation was proposed in December 1974, was modified substantially on the basis of agency and public comments, and was sent to interagency review this past January. It has been held up since, primarily because of OMB objections to the general concept.

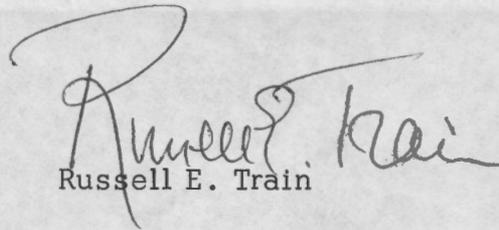
Meanwhile, the Senate Clean Air Act Amendments include a provision which mandates assembly line testing, instead of the approach of existing law which leaves such a regulation and its scope to the discretion of the EPA Administrator. (It is my understanding that the amendment has the support of the entire committee.) The Senate amendment, if it becomes law, could require EPA to develop a far more extensive and demanding assembly line test procedure than that provided in our proposed regulation. It is presumably for this reason that at least one major auto maker (Ford) has urged promulgation of regulations as soon as possible.

The absence of EPA action on a final regulation has provided the major impetus for the Senate amendment. It has also led to inquiries from the Moss Subcommittee on Oversight and Investigations (House) and a recent letter from Senator Muskie highly critical of our inaction.

I am committed to opposing the Senate amendment as unnecessary when and if our regulations are promulgated. I would have no credibility in opposing the amendment under any other circumstances. Time is running out. The Senate has scheduled the Clean Air Act for next Monday, July 26. In order for me to have any opportunity for effectively opposing the amendment now in the bill, it is essential that EPA's regulation be promulgated immediately. Six weeks have already elapsed since our meeting on the subject and there is no resolution of the basic differences between EPA and OMB.

In order to resolve the matter, I propose to sign the regulation and send it to the Federal Register at noon, July 20th, unless I have direct instructions from you not to do so. (I am leaving that afternoon for a meeting of the International Joint Commission at Windsor, Ontario, and for a Great Lakes clean-up inspection.)

I believe this course of action is essential both to dealing with the Senate bill and also to avoiding what could be a major political embarrassment.


Russell E. Train

cc: Mr. James Lynn
Mr. James Cannon
Mr. William Seidman

SPECIAL

U.S. ENVIRONMENTAL PROTECTION
AGENCY

EPA FORM 1320-8 (4-73)

United States
Environmental Protection Agency

The Administrator
Washington, D.C. 20460

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THE WHITE HOUSE
WASHINGTON

7/19/76

TO: JIM CANNON

For Your Information: _____

For Appropriate Handling: XX

check
second
page


Robert D. Linder