



United States Government Accountability Office
Washington, DC 20548

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October 11, 2012

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Regulation of Fuels and Fuel Additives:
2013 Biomass-Based Diesel Renewable Fuel Volume*

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 “Regulation of Fuels and Fuel Additives: 2013 Biomass-Based Diesel Renewable Fuel Volume” (RIN: 2060-AR55). We received the rule on September 20, 2012. It was published in the *Federal Register* as a final rule on September 27, 2012. 77 Fed. Reg. 59,458.

Under the Clean Air Act section 211(o), the Environmental Protection Agency is required to determine the applicable volume of biomass-based diesel to be used in setting annual percentage standards under the renewable fuel standard program for years after 2012. The final rule finalizes an applicable volume of 1.28 billion gallons of biomass-based diesel for calendar year 2013.

Enclosed is our assessment of 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 of the procedural steps taken indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory
Management Division
Environmental Protection Agency

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"REGULATION OF FUELS AND FUEL ADDITIVES:
2013 BIOMASS-BASED DIESEL RENEWABLE FUEL VOLUME"
(RIN: 2060-AR55)

(i) Cost-benefit analysis

EPA prepared an estimate of the costs and benefits associated with the final rule. EPA determined that the quantified estimates of benefits include \$41 million in energy security benefits and \$19–52 million in air quality disbenefits. Other benefits of the final rule include GHG emissions reduction benefits and both direct and indirect employment benefits in rural areas due to increased biodiesel production. Impacts on water quality, water use, wetlands, ecosystems and wildlife habitats are expected to be directionally negative but modest due to both the small impact on crop acres planted necessary to supply sufficient soy oil feedstock and due to the relatively small impact on these measures of soybean production compared to other potential crops.

EPA noted that biodiesel is produced from a variety of feedstocks, including recycled cooking oil, agricultural oils such as soybean and canola oil, and animal fats, and that most biodiesel producers can switch from one feedstock to another depending on price and availability. However, for the purpose of analyzing the impacts of the final rule, EPA assumed that all of the 280 million gallon increment above the 2012 standard will be met through increased demand for soy oil. Using this assumption, EPA estimated that soybean prices could increase up to 3 cents per pound in 2013 if all of the 280 million gallon increment above the 2012 standard is met through increased demand for soy oil. Using these assumptions, EPA estimated the cost of producing this increment in biomass-based diesel would range from \$253 to \$381 million in 2013. EPA concluded that adding the estimate of 2013 costs to the total 2013 fuel pool would suggest a diesel fuel cost increase of less than 1 cent per gallon.

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

EPA certified that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, EPA did not prepare a regulatory flexibility analysis.

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

EPA determined that the final rule does not contain a federal mandate that will result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA also stated that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments.

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

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

EPA published a notice of proposed rulemaking in the *Federal Register* on July 1, 2011. 76 Fed. Reg. 38,844. EPA responded to comments in the final rule.

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

The final rule contains no new information collection requirements under the Paperwork Reduction Act. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations which are amended by the final rule. These collections include the following approved information collections: “Renewable Fuels Standard Program: Petition and Registration” (OMB Control Number 2060–0637, expires March 31, 2013); “Renewable Fuels Standard (RFS2)” (OMB Control Number 2060–0640, expires July 31, 2013); “Regulations of Fuels and Fuel Additives: 2011 Renewable Fuels Standard—Petition for International Aggregate Compliance Approach” (OMB Control Number 2060–0655, expires February 28, 2014).

Statutory authorization for the rule

The final rule is authorized by section 211 of the Clean Air Act, as codified at 42 U.S.C. § 7545.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule is an economically significant rule under the Executive Order and has been reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

EPA determined that the final rule does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.