



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Washington, DC 20548

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July 11, 2022

The Honorable Thomas R. Carper
Chairman
The Honorable Shelley Moore Capito
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Renewable Fuel Standard (RFS) Program: RFS Annual Rules*

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 “Renewable Fuel Standard (RFS) Program: RFS Annual Rules” (RIN: 2060-AV11). We received the rule on June 6, 2022. It was published in the *Federal Register* as a final rule on July 1, 2022. 87 Fed. Reg. 39600. The effective date is August 30, 2022.

According to EPA, the final rule modifies EPA’s 2021 and 2022 statutory volume targets pursuant to the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.*, for cellulosic biofuel, advanced biofuel, and total renewable fuel. EPA states that the final rule also establishes the 2022 volume target for biomass-based diesel and modifies the previously established cellulosic biofuel, advanced biofuel, and total renewable fuel volume requirements for 2020. In addition, EPA states that the final rule establishes the 2020, 2021, and 2022 renewable fuel percentage standards for all of the above-referenced biofuel categories. Finally, according to EPA, the final rule addresses a judicial remand of EPA’s 2016 standard-setting rulemaking, as well as several regulatory changes to EPA’s RFS program, including regulations for the use of biointermediates to produce qualifying renewable fuel, flexibilities for regulated parties, and clarifications of existing regulations.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, appearing to read "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"RENEWABLE FUEL STANDARD (RFS) PROGRAM: RFS ANNUAL RULES"
(RIN: 2060-AV11)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) conducted an economic analysis of this final rule. EPA's analysis included an assessment of the potential quantified and unquantified impacts associated with the fuel volumes specified in the final rule. Specific impacts that EPA considered in its economic analysis included: (1) impacts on air quality from biofuel production and use; (2) impacts on climate change from biofuel feedstocks production and displacement of petroleum fuels; (3) impacts on wetlands, ecosystems, and wildlife habitat from land use change; (4) impacts on soil and water quality from biofuel feedstock production; (5) impacts on water quantity and availability from biofuel and feedstock production; (6) energy security (estimated monetized effect of \$294 million); (7) production and use of renewable fuels; (8) infrastructure; (9) jobs; (10) rural economic development; (11) commodity supply and price impacts; and (12) general costs (estimated monetized effect of \$7 billion from fuel cost increases).

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

EPA certified that this final rule will not have a significant economic impact on a substantial number of small entities under the RFA. EPA indicates that it made this determination because the rule will not change the compliance flexibilities currently offered to small entities under the RFS program and because available information shows that the impact on small entities from implementation of this rule will not be significant when viewed either from the perspective of it being a standalone action or a part of the overall RFS program.

(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 this final rule does not contain an unfunded mandate of \$100 million or more and that it does not significantly or uniquely affect small governments. EPA stated that the final rule implements mandates specifically and explicitly set forth in section 211(o) of the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.* Finally, EPA stated its belief that the final rule represents the least costly, most cost-effective approach to achieve relevant statutory requirements.

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

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

On December 21, 2021, EPA published a proposed rule. 86 Fed. Reg. 72436. EPA responded to comments in the final rule. EPA also stated that more in-depth responses to comments are located in a separate Response to Comments document available in the docket for this rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

EPA determined that this final rule contains information collection requirements under the Act. EPA stated that it has submitted those information collection activities for approval by the Office of Management and Budget (OMB) and that the document was assigned EPA Information Collection Request (ICR) Number 2691.02. EPA stated that once the ICR is approved, it will publish an amendment to the relevant Code of Federal Regulations part to display the OMB Control Number. EPA estimated a total annual burden of 167,385 hours and \$9,262,146 associated with ICR Number 2691.02.

Statutory authorization for the rule

EPA promulgated this final rule pursuant to sections 7414, 7521, 7522–7525, 7541, 7542, 7543, 7545, 7547, 7550, and 7601 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EPA determined that this final rule is economically significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

EPA determined that this final rule does not have federalism implications and 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 the various levels of government.