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December 23, 2015

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

The Honorable Fred Upton  
Chairman  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017*

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 Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017” (RIN: 2060-AS22). We received the rule on December 4, 2015. It was published in the *Federal Register* as a final rule on December 14, 2015. 80 Fed. Reg. 77,420.

The final rule establishes the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the years 2014, 2015, and 2016. Under section 211 of the Clean Air Act, EPA is required to set renewable fuel percentage standards every year. EPA states it is establishing a cellulosic biofuel volume for all 3 years that is below the applicable volume specified in the Act, and is also rescinding the cellulosic biofuel standard for 2011. Relying on statutory waiver authorities, EPA adjusted the applicable volumes of advanced biofuel and total renewable fuel for all 3 years. EPA expects the 2016 standards to spur further progress in overcoming current constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of renewable fuels. In this action, EPA also established the applicable volume of biomass-based diesel for 2017. Finally, EPA set the compliance and attest reporting deadlines for the years 2013, 2014, and 2015, as well as finalized regulatory amendments to clarify the scope of the existing algal biofuel pathway.

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  
“RENEWABLE FUEL STANDARD PROGRAM:  
STANDARDS FOR 2014, 2015, AND 2016 AND  
BIOMASS-BASED DIESEL VOLUME FOR 2017”  
(RIN: 2060-AS22)

(i) Cost-benefit analysis

EPA provided three illustrative cost estimates for the final standards. By “illustrative costs,” EPA stated that it meant that the cost estimates provided are not meant to be precise measures, nor do they attempt to capture the full impacts of the rule. These estimates are provided solely for the purpose of showing how the cost to produce a gallon of a “representative” renewable fuel compares to the cost of petroleum fuel. EPA also stated that there are a significant number of caveats that must be considered when interpreting these cost estimates. EPA states that it framed the analyses it performed for this final rule as “illustrative” so as not to give the impression of comprehensive estimates.

EPA states that the annual standard-setting process encourages consideration of the program on a piecemeal (i.e., year-to-year) basis, which may not reflect the long-term economic effects of the program. Therefore, for the purpose of this annual rulemaking, EPA did not quantify benefits for the 2015 and 2016 final standards. EPA states further that when the Renewable Fuel Standard (RFS) program is fully phased in, the program will result in considerable volumes of renewable fuels that will reduce greenhouse gases (GHG) emissions in comparison to the fossil fuels that they replace. EPA estimated GHG, energy security, and air quality impacts and benefits for the March 26, 2010, RFS2 final rule for 2022 (75 Fed. Reg. 14,670).

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 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 under RFA. EPA previously prepared a Final Regulatory Flexibility Analysis. EPA stated that this analysis looked at impacts to all refiners, including small refiners, through the year 2022 and found that the program would not have a significant economic impact on a substantial number of small entities and that this impact was expected to decrease over time, even as the standards increased.

EPA used a cost-to-sales ratio test, a ratio of the estimated annualized compliance costs to the value of sales per company, for gasoline and/or diesel small refiners subject to the standards. From this test, EPA estimated that all directly regulated small entities would have compliance costs that are less than 1 percent of their sales over the life of the program (75 Fed. Reg. 14,862) (Mar. 26, 2010). According to EPA, the final rule would not impose additional requirements on small entities, would decrease burden via a reduction in required volumes as compared to statutory volume targets and would not change the compliance flexibilities currently offered to small entities under the RFS program (including the small refinery hardship provisions EPA continues to implement). EPA states further that available information shows that the

impact on small entities from implementation of the final rule will not be significant. EPA has concluded that the final rule would have no net regulatory burden for directly regulated small entities.

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

EPA determined that the final rule contains a federal mandate that may 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. Accordingly, EPA prepared a written statement required under section 202 of UMRA. EPA states that the final rule implements mandates specifically and explicitly set forth in Clean Air Act (CAA) section 211(o). EPA concluded that this rule represents the least costly, most cost-effective approach to achieve the statutory requirements of the rule. EPA stated that the final rule is not subject to the requirements of section 203 of UMRA because it 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.

On June 10, 2015, EPA published a proposed rule which provided an opportunity for submitting public comments. 80 Fed. Reg. 33,100. EPA also conducted a public hearing on June 25, 2015, at which many parties provided both verbal and written testimony. All comments received, both verbal and written, are available in EPA docket EPA-HQ-OAR-2015-0111, and EPA considered the comments in developing the final rule. Public comments and EPA responses are discussed throughout the final rule and in the accompanying response to comment document, which is available in the docket for the final rule.

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

EPA determined that the final rule does not impose any new information collection burden under PRA. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060-0637 and 2060-0640. EPA states the final standards would not impose new or different reporting requirements on regulated parties than already exist for the Renewable Fuel Standard program.

Statutory authorization for the rule

EPA promulgated this final rule under the authority of section 211 of CAA, 42 U.S.C. 7545. EPA states that additional support for the procedural and compliance related aspects of this final rule come from sections 114, 208, and 301(a) of CAA, 42 U.S.C. 7414, 7542, and 7601(a).

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

EPA determined that the final rule is an economically significant regulatory action that was submitted to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

EPA concluded that the final rule does not have federalism implications. 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 the various levels of government.

Executive Order No. 13,175 (Consultation and Coordination with Tribes)

EPA determined that this final rule does not have tribal implications as specified by the Order.

Executive Order No. 13,045 (Children's Safety)

EPA determined that this final rule is not subject to the Order because it does not establish an environmental standard intended to mitigate health or safety risks and because it implements specific standards established by statute.

Executive Order No. 13,211 (Energy Supply)

EPA determined that this final rule will not be likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA predicts that this rule will have a positive effect on energy supply and use.

National Technology Transfer and Advancement Act

EPA determined that the final rule does not involve technical standards.

Executive Order No. 12,898 (Environmental Justice in Minority and Low-Income Populations)

EPA believes that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations.