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April 9, 2010

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

The Honorable Henry A. Waxman
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Environmental Protection Agency: Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program*

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: Changes to Renewable Fuel Standard Program” (RIN: 2060-AO81). We received the rule on March 26, 2010. It was published in the *Federal Register* as a final rule on March 26, 2010 with a stated effective date of July 1, 2010. 75 Fed. Reg. 14,670.

The final rule implements requirements of the Energy Independence and Security Act of 2007,¹ which specifies the volumes of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that must be used in transportation fuel. This rule includes the cellulosic, biomass-based diesel, advanced biofuel, and renewable fuel standards that will apply to all gasoline and diesel produced or imported in 2010. The rule makes changes to the current Renewable Fuel Standard program while retaining elements of the compliance and trading system already in place. This final rule also implements the revised statutory definitions and criteria,

¹ Public Law No. 110-140, 121 Stat. 1492 (Dec. 19, 2007).

including the new greenhouse gas emission thresholds for renewable fuels and new limits on renewable biomass feedstocks. It marks the first time that greenhouse gas emission performance is being applied in a regulatory context for a nationwide program.

Enclosed is our assessment of the 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

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:
CHANGES TO RENEWABLE FUEL STANDARD PROGRAM"
(RIN: 2060-A081)

(i) Cost-benefit analysis

The Environmental Protection Agency (EPA) analyzed the costs and benefits of this final rule. In its Regulatory Impact Analysis for this rule, EPA estimated the impacts of an expansion of renewable fuel use as required by this rule, but did not evaluate to what extent such an expansion would have occurred in the absence of this rule. EPA estimated that the 2022 impact on gasoline costs would be -2.4 cents per gallon; on diesel costs, -12.1 cents per gallon; on overall fuel costs, -\$11.8 billion; and on gasoline and diesel consumption, -13.6 billion gallons. EPA also estimated that the total capital costs through 2022 would be \$90.5 million. The estimated food costs would be 8.2 percent for corn, 10.3 percent for soybeans, and \$10 per capita. EPA estimated the economic impacts of this rule to be \$2.6 billion for energy security, between -\$630 million and -\$2.2 billion for monetized health impacts, between \$600 million and \$12.2 billion for monetized greenhouse gases impacts, -\$41.5 billion in oil impacts, 3.6 billion in farm gate food, \$13 billion in farm income, -\$57 million in corn exports, and -\$453 million in soybean exports. EPA estimates the total benefit for this rule in 2022 to be between \$13 billion and \$26 billion.

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

EPA prepared a Final Regulatory Flexibility Analysis which covered the need for and objectives of the rule; significant issues raised by public comment and responses to those comments; a description and estimate of small entities affected; a description of reporting, recordkeeping, and other compliance requirements and their impact on small entities; and steps the agency took to minimize any adverse economic impact on small entities.

EPA used a cost-to-sales ratio test to analyze the potential impacts of this rule on small businesses. For 2022, EPA found that all 17 small refiners would be affected at less than 1 percent of their sales and that these costs would actually be negative—ranging from a cost savings of 0.94 to 3.15 percent. EPA estimated the gasoline and diesel costs for 2022 to be -2.35 and -12.07 cents per gallon respectively. EPA also estimated the impacts in 2010 and 2012 for small refiners and found that small refiners were still affected at less than 1 percent, although costs were not negative.

(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 contains no regulatory requirement that might significantly or uniquely affect small governments. However, EPA did determine that this final rule contains a federal mandate that may result in expenditures of \$100 million or more for the private sector in any one year, but that the rule imposes no enforceable duty on any state, local, or tribal government. EPA concluded that this rule represents the least costly, most cost-effective approach to achieve its aims.

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

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

EPA published a proposed rule on May 26, 2009 which provided an opportunity for submitting public comments. 74 Fed. Reg. 24,904. EPA also conducted a public hearing on the proposed rule on June 9, 2009. In developing this final rule, EPA considered to comments on the proposed rule and from the hearing. Throughout the rulemaking process, EPA met with stakeholder including representatives from the fuel and renewable fuel industries, the agricultural sector, and others.

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

EPA determined that this final rule contains information collection requirements under the Act and has submitted those collection requirements to the Office of Management and Budget (OMB). EPA estimates that the annual recordkeeping and reporting burden for this rule to be 3.2 hours per response and a total of 1,060,026 respondents, and a total burden of 1,485,008 hours. EPA estimates the costs associated with responding to the information collection requirements to be \$112,872,105.

Statutory authorization for the rule

EPA promulgated this final rule under the authority of section 211 of the Clear Air Act. 42 U.S.C. § 7545. EPA also cited sections 114, 208, and 301 of the Clear Air Act for additional support for the procedural and compliance related aspects of this rule. 42 U.S.C. §§ 7414, 7542, 7601.

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

EPA determined that this final rule is an economically significant final rule under the Order because it is likely to have an annual effect on the economy of \$100 or more. EPA submitted this rule to OMB for review.

Executive Order No. 13,132 (Federalism)

EPA determined that this final rule will not have substantial direct effect on the states, on the relationship between the federal 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.