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United States General Accounting Office  
Washington, DC 20548

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B-294137

July 12, 2004

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

The Honorable W.J. "Billy" Tauzin  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Environmental Protection Agency: Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel*

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 "Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel" (RIN: 2060-AK27). We received the rule on May 13, 2004. It was published in the Federal Register as a final rule on June 29, 2004. 69 Fed. Reg. 38958.

The final rule adopts new emission standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. The comprehensive national program regulates nonroad diesel engines and diesel fuel as a system. New engine standards begin to take effect in the 2008 model year, phasing in over a number of years.

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 indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson,

Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky  
Managing Associate General Counsel

Enclosure

cc: Stephanie Daigle  
Deputy Associate Administrator  
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY THE  
ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"CONTROL OF EMISSIONS OF AIR POLLUTION  
FROM NONROAD DIESEL ENGINES AND FUEL"  
(RIN: 2060-AK27)

(i) Cost-benefit analysis

EPA performed a Regulatory Impact Analysis that found the net present value of the social cost of the final rule over 30 years (2007 to 2036) to be \$27 billion (using a 3-percent discount rate) and \$14 billion (using a 7-percent discount rate). EPA's analysis projects the benefits to be \$805 billion (3-percent discount) and \$352 billion (7-percent discount) resulting from the prevention of thousands of deaths and other serious health effects.

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

EPA prepared Initial and Final Regulatory Flexibility Analyses in connection with the proposed rule and the final rule, respectively. The final analysis contains the required information and discusses the steps taken to lessen the burden on small entities including delayed compliance for small refiners.

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

The final rule contains a mandate, as defined in title II, on the private sector of more than \$100 million in any one year. As part of the Regulatory Impact Analysis, EPA has concluded that the final rule represents the least costly, most cost-effective approach to achieve the goals of the rule.

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

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

Instead of the notice and comment procedures in the Administrative Procedure Act, EPA promulgated the rule using the procedures, which have similar notice and comment requirements, contained in section 307(d) of the Clean Air Act, as amended. 42 U.S.C. 7607(d). The use of these procedures regarding this rule is mandated by sections 307I(d)(1)(r).

EPA published a Notice of Proposed Rulemaking on May 23, 2003, in the Federal Register. 68 Fed. Reg. 28477. The comments received are discussed in the preamble to the final rule.

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

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections with the required burden estimates have been submitted for review.

EPA estimates that there will be 3,027 respondents with a total hourly burden of 495,904 hours at a cost of \$40,938,348 for completing the information collections.

Statutory authorization for the rule

The portion of the rule relating to the engine controls is promulgated pursuant to the authority found in sections 213, 203-209, 216, and 301 of the Clean Air Act, 42 U.S.C. 7547, 7522, 7523, 7424, 7525, 7541, 7542, 7543, 7550, and 7601.

The statutory authority for the new fuel controls is section 211(c) and 211(i) of the Clean Air Act, 42 U.S.C. 7545(c) and (i). The authority for the procedural and enforcement-related aspects of the fuel controls, including the recordkeeping requirements, is found in sections 114(a) and 301(a) of the Clean Air Act, 42 U.S.C. 7414(a) and 7601(a).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

EPA has reviewed the rule and found that does not have federalism implications.