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Office of the General Counsel

B-277899

September 8, 1997

The Honorable Frank H. Murkowski  
Chairman  
The Honorable Dale Bumpers  
Ranking Minority Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Department of Energy: Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Energy (DOE), entitled "Energy Conservation Program for Consumer Products: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers and Freezers" (RIN: 1904-AA47). We received the rule on August 26, 1997. It was published in the Federal Register as a final rule on April 28, 1997. 62 Fed. Reg. 23102.

The final rule, which is effective on July 1, 2001, revises the energy conservation standards for refrigerators, refrigerator-freezers, and freezers and is expected to result in reduced energy consumption, reduced consumer costs, and reduced emissions of air pollutants associated with electricity production.

Enclosed is our assessment of DOE'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 DOE complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Energy is Victor Rezendes, Director for Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy  
General Counsel

Enclosure

cc: Mr. Eric J. Fygi  
Acting General Counsel  
Department of Energy

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF ENERGY  
ENTITLED  
"ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS:  
ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS,  
REFRIGERATOR-FREEZERS AND FREEZERS"  
(RIN 1904-AA47)

(i) Cost-benefit analysis

The Regulatory Impact Analysis (RIA) describes the costs and benefits of the final rule. In addition, the RIA discusses the costs and benefits of the various alternatives which were considered and also the assumptions and methodology used in computing the impact of the various regulatory scenarios.

The final rule is expected to increase the energy efficiency of full-sized refrigerators by 22 to 30 percent and compact refrigerators by 10 percent. The cost of the more efficient refrigerators is expected to average \$80 more and save the consumer \$20 per year in energy costs, thereby allowing recovery of the increased cost in 4 years.

Annual savings due to reduced electricity use are estimated at \$1.1 billion in 2010, \$2.0 billion in 2020, and \$2.1 billion in 2030. The reduction in emissions from the production of electricity for the period 2001-2030 is 1.5 million short tons of NO<sub>x</sub> and 513 million short tons of CO<sub>2</sub>.

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

In the Notice of Proposed Rulemaking, DOE certified that the rule would not have a significant economic impact on a substantial number of small entities and, therefore, did not prepare an initial regulatory impact analysis. No comments were received in regard to this certification.

DOE continues to believe that the final rule will not have such an impact. However, if after the rule becomes effective and such an impact is shown, DOE will exercise its authority under the Energy Policy and Conservation Act to grant appropriate relief to small entities.

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

According to DOE, the final rule will impose a mandate on the private sector of over \$100 million annually and, therefore, the rule is subject to the requirements of the act.

As required by section 205, DOE considered numerous regulatory alternatives which were discussed in the Regulatory Impact Analysis. DOE must select the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. DOE states that the alternative it has selected, as required by section 325(o) of the Energy Policy and Conservation Act, is designed to achieve the maximum improvement in energy efficiency which DOE has determined to be technologically feasible and economically justified.

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

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

The final rule was promulgated using the notice and comment procedures in 5 U.S.C. § 553.

On September 8, 1993, DOE published an Advanced Notice of Proposed Rulemaking (58 Fed. Reg. 47326) which discussed the methodology and models DOE planned to use to support the rulemaking. In response to the request for comments, DOE received joint comments from refrigerator manufacturers, energy efficiency advocates, electric utilities, and state energy offices which were meeting to develop common recommendations.

On July 20, 1995, DOE published a Notice of Proposed Rulemaking (NPRM) (60 Fed. Reg. 37388) containing the amended energy conservation standards for refrigerator products.

Following further discussions with the various stakeholders and the publication of a rule institutionalizing procedural enhancements in developing appliance efficiency standards (61 Fed. Reg. 36973, July 15, 1996), the comment period under the NPRM was reopened. DOE has received over 200 comments and responds to the significant issues raised in the preamble to the final rule.

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

The final rule does not contain any information collections subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

### Statutory authorization for the rule

The final rule was promulgated under the authority of Part B of Title III of the Energy Policy and Conservation Act, as amended. 42 U.S.C. §§ 6291-6309.

### Executive Order No. 12866

The final rule was determined to be an "economically significant regulatory action" under Executive Order No. 12866 and was reviewed by the Office of Management and Budget (OMB). A Regulatory Impact Analysis of the rule was prepared, as required by the order. The Office of Information and Regulatory Affairs of OMB approved the rule on April 15, 1997, as complying with the requirements of the order based on the information supplied by DOE, which included the planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impacts of the rule.

### National Environmental Policy Act

DOE prepared a draft Environmental Assessment pursuant to the act and received no comments on it when it was published at the time of the proposed rulemaking. Under the assessment, the environmental effects of the final rule are not deemed to be significant under the act, and DOE issued a Finding of No Significant Impact on the date it published the final rule.

### Executive Order No. 12630

DOE has reviewed the final rule pursuant to the order and found that the rule does not result in any takings which might require compensation under the Fifth Amendment of the U.S. Constitution.

### Executive Order No. 12612

A federalism assessment was not prepared by DOE based on its conclusion that there are no substantial direct effects on states, on the relationship between the federal government and the states, or on the distribution of power among various levels of government.