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July 3, 2013

The Honorable Ron Wyden
Chairman
The Honorable Lisa Murkowski
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens*

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: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens” (RIN: 1904-AC07). We received the rule on June 19, 2013. It was published in the *Federal Register* as a final rule on June 17, 2013. 78 Fed. Reg. 36,316.

The final rule implements the Energy Policy and Conservation Act of 1975 (EPCA), as amended, which prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment. The Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require any final rule adopted after July 1, 2010, establishing or revising energy conservation standards for covered products, including microwave ovens, to address standby mode and off mode energy use. DOE has determined that the amended energy conservation standards for these products in standby mode and off mode would result in significant conservation of energy, and are technologically feasible and economically justified.

The final rule has an effective date of August 16, 2013. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on June 17, 2013, but we did not receive the rule until June 19, 2013. Therefore, the final rule does not have the required 60-day delay in its effective date. We note, however, that the final rule has a compliance date of June 17, 2016. The new standards do not apply to any microwave oven manufactured before that compliance date.

Enclosed is our assessment of the 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 of the procedural steps taken indicates that DOE complied with the applicable requirements, with the exception of the 60-day delay in effective date requirement.

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: Daniel Cohen
Assistant General Counsel for Legislation,
Regulation, and Energy Efficiency
Department of Energy

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF ENERGY
ENTITLED
"ENERGY CONSERVATION PROGRAM:
ENERGY CONSERVATION STANDARDS FOR
STANDBY MODE AND OFF MODE FOR MICROWAVE OVENS"
(RIN: 1904-AC07)

(i) Cost-benefit analysis

DOE evaluated the benefits and costs to consumers, the impact on manufacturers, national economic benefits and costs of microwave energy conservation standards, and the annualized benefits and costs of amended standards for microwave ovens. Based on the analyses culminating in the final rule, DOE found the benefits to the nation of the standards (energy savings, consumer life-cycle costs (LCC) savings, positive net present value (NPV) of consumer benefit, and emission reductions) outweighed the burdens (loss of industry net present value and LCC increases for a very small percentage of users of these products). DOE has concluded that the standards in the final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy.

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

The Act requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DOE used the Small Business Administration's (SBA) small business size standards to determine whether any small entities would be subject to the requirements of the rule. DOE surveyed the Association of Home Appliance Manufacturers (AHAM) member directory to identify manufacturers of microwave ovens. In addition, DOE asked interested parties and AHAM representatives within the microwave oven industry if they were aware of any small business manufacturers. DOE consulted publicly available data, purchased company reports from sources such as Dun & Bradstreet, and contacted manufacturers, where needed, to determine if they meet SBA's definition of a small business manufacturing facility and have their manufacturing facilities located within the United States. Based on this analysis, DOE determined that the microwave oven industry consists of seven manufacturers that have a market share greater than 3 percent. Most are large, foreign companies that import microwave ovens into the United States. According to DOE, there are U.S. facilities that partly assemble microwave ovens, but none of these are small businesses. DOE estimates that there is one small business that manufactures a product which combines a microwave oven with other appliance functionality. However, because DOE is not amending energy conservation standards at this time for the microwave oven portion of such combined products, DOE certifies that the final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. § 605(b).

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

DOE has concluded that this final rule would likely require expenditures of \$100 million or more on the private sector. According to DOE such expenditures may include: (1) investment in research and development and in capital expenditures by microwave oven manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency microwave ovens, starting at the compliance date for the applicable standard. Section 202 of UMRA authorizes a federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12,866. Under section 205 of UMRA, DOE is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. § 6295(h), the final rule would establish energy conservation standards for microwave ovens that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. DOE presented a full discussion of the alternatives considered in the Regulatory Impact Analysis (RIA).

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

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

DOE published a supplemental notice of proposed rulemaking (SNOPR) on February 14, 2012, entitled Energy Conservation Program: Energy Conservation Standards for Standby Mode and Off Mode for Microwave Ovens. 77 Fed. Reg. 8526. DOE received comments on the topic of covered products in response to the February 2012 SNOPR on microwave oven energy conservation standards.

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

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedure for microwave ovens, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including microwave ovens. 76 Fed. Reg. 12,422. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by the Office of Management and Budget (OMB) under the Act. This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Statutory authorization for the rule

DOE states that the final rule is authorized by Title III, Part B of the Energy Policy and Conservation Act of 1975 (42 U.S.C. §§ 6291–6309, as codified), which established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, and includes the types of microwave ovens that are the subject of the final rule. 42 U.S.C. § 6292(a)(10).

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

DOE has determined that the final rule is an “economically significant regulatory action.” Accordingly, DOE presented for review the draft rule and other documents prepared for this rulemaking, including the RIA, to the Office of Information and Regulatory Affairs (OIRA) and has included these documents in the rulemaking record. The assessments prepared pursuant to the Order can be found in the technical support document for this rulemaking.

Executive Order No. 13,132 (Federalism)

The Order imposes certain requirements on federal agencies formulating and implementing policies or regulations that preempt state law or that have federalism implications and requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and to carefully assess the necessity for such actions. The Order also requires agencies to have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 Fed. Reg. 13,735. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of the final rule. DOE notes that states can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. § 6297. According to DOE, no further action is required by the Order.