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United States Government Accountability Office
Washington, DC 20548

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February 12, 2010

The Honorable Jeff Bingaman
Chairman
The Honorable Lisa Murkowski
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

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

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)*

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 Certain Consumer Products (Dishwashers, Dehumidifiers, Microwave Ovens, and Electric and Gas Kitchen Ranges and Ovens) and for Certain Commercial and Industrial Equipment (Commercial Clothes Washers)” (RIN: 1904-AB93). We received the rule on January 25, 2010. It was published in the *Federal Register* as a final rule on January 8, 2010. 75 Fed. Reg. 1122.

The final rule amends energy conservation standards for commercial clothes washers (CCWs). The Energy Policy and Conservation Act (EPCA), as amended by the Energy Policy Act of 2005 (EPACT 2005), directs DOE to consider mandatory energy conservation standards for CCWs. The EPACT 2005 amendments to EPCA require that DOE issue a final rule by January 1, 2010, to determine whether standards for CCWs should be amended. Under the EPACT 2005 amendments, if

amended standards are justified, they would become effective no later than January 1, 2013. DOE states the standards established in the final rule will be applicable starting January 8, 2013.

The final rule has an effective date of March 9, 2010. 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 January 8, 2010, but we did not receive the rule until January 25, 2010. Therefore, the final rule does not have the required 60-day delay in its effective 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.

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 CERTAIN CONSUMER PRODUCTS (DISHWASHERS, DEHUMIDIFIERS,
MICROWAVE OVENS, AND ELECTRIC AND GAS KITCHEN RANGES AND
OVENS) AND FOR CERTAIN COMMERCIAL AND
INDUSTRIAL EQUIPMENT (COMMERCIAL CLOTHES WASHERS)"
(RIN: 1904-AB93)

(i) Cost-benefit analysis

DOE considered the cost and benefits of the rule and determined that the costs outweigh the benefits. The benefits include energy savings, life cycle costs (LCC) savings for CCW consumers, positive national net present value, and emissions reductions. The costs include loss of manufacturer industry net present value and LCC increases for some CCW consumers.

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

DOE certifies that the final rule will not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required. DOE used the small business definitions set by the Small Business Administration to determine whether any of the manufacturers of equipment covered by this rulemaking qualify as small entities that would be required to comply with the rule.

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

DOE states the final rule does not contain a federal intergovernmental mandate. It may impose expenditures of \$100 million or more on the private sector, although DOE believes such expenditures are likely to be less than \$50 million.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On November 9, 2009, DOE published a notice of proposed rulemaking on the Energy Conservation Program. 74 Fed. Reg. 57,738. DOE

received timely public comments which are addressed in the final rule. 75 Fed. Reg. 1127.

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

DOE states the final rule imposes no information and recordkeeping requirements. Therefore, DOE has taken no further action in this rulemaking with respect to the act.

Statutory authorization for the rule

DOE states the final rule is authorized by EPCA, as amended (42 U.S.C. 6291 *et seq.*), by EPCACT 2005. 42 U.S.C. 6313(e)(2)(A).

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

DOE states the final rule is a “significant regulatory action.” Therefore, this action is subject to review by the Office of Management and Budget (OMB). Accordingly, DOE presented the draft final rule and other documents prepared for this rulemaking, including a regulatory impact analysis, to OMB for review.

Executive Order No. 13,132 (Federalism)

DOE states that it examined the November 2009 proposed rule and determined that it would not have a substantial direct effect 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. 74 Fed. Reg. 57,798. DOE notes that it received no comments on this issue in response to the November 2009 notice of proposed rulemaking, and its conclusions on this issue are the same for the final rule as they were for the proposed rule. Therefore, DOE states it has taken no further action in the final rule with respect to the order.