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B-322512

October 4, 2011

The Honorable Jeff Bingaman  
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 Residential 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: Energy Conservation Standards for Residential Refrigerators, Refrigerator-Freezers, and Freezers” (RIN: 1904-AB79). We received the rule on September 19, 2011. It was published in the *Federal Register* as a final rule on September 15, 2011. 76 Fed. Reg. 57,516. The final rule has a stated effective date of November 14, 2011, and compliance with the amended standards is required as of September 15, 2014.

The final rule adopts more stringent energy conservation standards for refrigerators, refrigerator-freezers, and freezers. DOE states that it has determined that the amended energy conservation standards for these products would result in the significant conservation of energy and are technologically feasible and economically justified.

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). This final rule was

published on September 15, 2011, and received by GAO on September 19, 2011. This rule has a stated effective date of November 14, 2011. Therefore, this final rule does not have a 60-day delay in its effective date.

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 of the procedural steps taken indicates that, with the exception of the 60-day delay in effective date, 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 RESIDENTIAL REFRIGERATORS,  
REFRIGERATOR-FREEZERS, AND FREEZERS"  
(RIN: 1904-AB79)

(i) Cost-benefit analysis

DOE prepared an analysis of the annualized costs and benefits of the final rule using two different discount rates. Using a 7-percent discount rate and the social costs of carbon (SCC) series having a value of \$22.1/ton in 2010, the cost of the standards in the final rule is \$1,167 to \$1,569 million per year in increased equipment costs, while the annualized benefits are \$2,275 million per year in reduced equipment operating costs, \$515 million in CO<sub>2</sub> reductions, and \$21 million in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$1,241 to \$1,643 million per year.

Using a 3-percent discount rate and the SCC series having a value of \$22.1/ton in 2010, the cost of the standards in today's rule is \$1,081 to \$1,526 million per year in increased equipment costs, while the benefits are \$3,160 million per year in reduced operating costs, \$515 million in CO<sub>2</sub> reductions, and \$28 million in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$2,176 to \$2,622 million per year.

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

DOE certified in the final rule that the standards for residential refrigeration products would not have a significant economic impact on a substantial number of small entities.

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

According to DOE, the final rule does not contain any intergovernmental mandates; however, the final rule may impose expenditures of \$100 million or more on the private sector. DOE notes that the supplementary information section of the notice of final rulemaking and its Regulatory Impact Analysis for this final rule respond to the UMRA requirements.

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

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

On September 18, 2008, DOE published a notice announcing the availability of the framework document and a public meeting to discuss the document. 73 Fed. Reg. 54,089. DOE held the public meeting on September 29, 2008, and then gathered additional information and performed preliminary analyses for the purpose of developing potential amended energy conservation standards for refrigeration products. On November 16, 2009, DOE announced a preliminary analysis public meeting in the *Federal Register*. 74 Fed. Reg. 58,915. DOE published the notice of proposed rulemaking on September 27, 2010. 75 Fed. Reg. 59,470. DOE received comments and responded to those comments in the final rule.

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

The final rule contains information collection requirements under the Paperwork Reduction Act. DOE estimates public reporting burden to average 20 hours per response, and the Office of Management and Budget (OMB) has approved the collection and it has been given OMB control number 1910-1400.

Statutory authorization for the rule

The final rule is authorized by Part A of title III of the Energy Policy and Conservation Act, 42 U.S.C. § 6295.

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

DOE determined the final rule to be economically significant under the Order and has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

The Environmental Policy and Conservation Act (EPCA) governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of the final rule, and states can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in the EPCA.