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December 15, 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 Fluorescent Lamp Ballasts*

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 Fluorescent Lamp Ballasts” (RIN: 1904-AB50). We received the rule on December 2, 2011. It was published in the *Federal Register* as a final rule on November 14, 2011. 76 Fed. Reg. 70,548.

The final rule adopts new and amended federal energy conservation standards for fluorescent lamp ballasts. The announced effective date of the final rule is January 13, 2012, and compliance with the new and amended standards established for fluorescent lamp ballasts is required as of November 14, 2014.

The final rule, a major rule under the Congressional Review Act (CRA), has an announced effective date of January 13, 2012. 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 November 14, 2011, but we did not receive the rule until December 2, 2011. Therefore, the final rule does not have the required 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 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 FLUORESCENT LAMP BALLASTS"
(RIN: 1904-AB50)

(i) Cost-benefit analysis

DOE performed a cost-benefit analysis in conjunction with the final rule. DOE found the benefits to the nation of the standards, including energy savings, consumer life-cycle cost savings, positive net present value of consumer benefit, and emission reductions, outweigh the costs, specifically the loss of industry net present value. 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. DOE further notes that in all product classes, ballasts achieving the standard levels are already commercially available.

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

DOE prepared a Regulatory Flexibility Act analysis in conjunction with the final rule. DOE determined that approximately 10 small businesses that produce covered products can be considered small business manufacturers. DOE found that small manufacturers would be burdened because they have fewer engineering resources and less capital to deploy toward redesign and UL testing compared to large manufacturers, but most small ballast manufacturers would be able to remain viable by focusing on niche markets or emerging technologies. DOE determined that the total conversion costs for a typical small manufacturer would represent 182 percent of annual earnings before interest and taxes (EBIT) compared to 82 percent of annual EBIT for a typical large manufacturer. DOE states that, although trial standard levels (TSLs) lower than the adopted TSL are expected to reduce the impacts on small entities, it is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Thus, DOE rejected the lower TSLs. DOE notes that small manufacturers, particularly those small sign ballast manufacturers who would be required to move from magnetic to electronic sign ballasts as a result of today's standards, may apply to DOE for an exemption from the standard pursuant to 42 U.S.C. 6295(t). The process applicants

must follow to request an exemption and DOE's process for making a decision on a particular request are set forth in DOE's regulations at 10 C.F.R. 430 Subpart E.

(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 January 22, 2008, DOE published a notice announcing the availability of the framework document and a public meeting to discuss the document. 73 Fed. Reg. 3,653. DOE held the public meeting on February 6, 2008. DOE then gathered additional information and performed preliminary analyses to help develop potential energy conservation standards for ballasts. On March 24, 2010, DOE announced the availability of the preliminary technical support document and of another public meeting to discuss and receive comments in the *Federal Register*. 75 Fed. Reg. 14,319. DOE published the notice of proposed rulemaking for new and amended energy conservation standards for fluorescent lamp ballasts on April 11, 2011. 76 Fed. Reg. 20,090. DOE held a public meeting on March 10, 2011, to hear oral comments on and solicit information relevant to the proposed rule. On August 24, 2011, DOE published a notice of data availability (NODA) to address data discrepancies identified at the March 10, 2011, public meeting. DOE received comments on the proposed rule of April 11, 2011, and the NODA of August 24, 2011, 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, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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 the final rule 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.