



441 G St. N.W.
Washington, DC 20548

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November 14, 2016

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

The Honorable Fred Upton
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Miscellaneous Refrigeration Products*

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 Standards for Miscellaneous Refrigeration Products" (RIN: 1904-AC51). We received the rule on October 28, 2016. It was published in the *Federal Register* as a direct final rule on October 28, 2016. 81 Fed. Reg. 75,194. The effective date of the rule is February 27, 2017, unless adverse comment is received by February 15, 2017.

The direct final rule adopts new energy conservation standards for miscellaneous refrigeration products that correspond to the recommendations submitted jointly by interested persons that are stated by DOE to be representative of relevant points of view. The Energy Policy and Conservation Act (EPCA) of 1975, as amended, established the Energy Conservation Program for Consumer Products Other Than Automobiles. Based on provisions in EPCA that enable the Secretary of Energy to classify additional types of consumer products as covered products, DOE classified miscellaneous refrigeration products as covered consumer products under EPCA. In this direct final rule, DOE has determined that the new energy conservation standards for these products would result in significant conservation of energy and are technologically feasible and economically justified. A notice of proposed rulemaking that proposes identical energy efficiency standards was published in the same issue of the *Federal Register*. DOE states that if it receives adverse comment and determines that such comment may provide a reasonable basis for withdrawal, DOE will withdraw the direct final rule and will proceed with the proposed rule.

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 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 STANDARDS FOR
MISCELLANEOUS REFRIGERATION PRODUCTS”
(RIN: 1904-AC51)

(i) Cost-benefit analysis

The Department of Energy (DOE) provided a cost benefit analysis in conjunction with the direct final rule on energy conservation standards for miscellaneous refrigeration products (MREFs). DOE states that its analyses indicated that the adopted energy conservation standards for MREFs would save a significant amount of energy. Relative to the no-new-standards case, the lifetime energy savings for MREFs purchased in the 30-year period that begins in the anticipated year of compliance with the new standards (2019-2048) amount to 1.5 quadrillion Btu (quads). According to DOE, this represents a savings of 58 percent relative to the energy use of these products in the no-new-standards case. The cumulative net present value (NPV) of total consumer costs and savings of the standards for MREFs ranges from \$4.78 billion (at a 7 percent discount rate) to \$11.02 billion (at a 3 percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for MREFs purchased in 2019-2048. In addition, DOE states that, according to the Environmental Protection Agency (EPA), the standards for MREFs are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions (over the same period as for energy savings) of 91.8 million metric tons (Mt) of carbon dioxide (CO₂), 54.0 thousand tons of sulfur dioxide (SO₂), 164.0 tons of nitrogen oxides (NO_x), 387.1 thousand tons of methane (CH₄), 1.1 thousand tons of nitrous oxide (N₂O), and 0.2 tons of mercury (Hg). The cumulative reduction in CO₂ emissions through 2030 amounts to 20.2 Mt, which is equivalent to the emissions resulting from the annual electricity use of more than 2.8 million homes.

According to DOE, the value of the CO₂ reductions is calculated using a range of values per metric ton of CO₂ (the Social Cost of Carbon, or SCC) developed by a federal interagency working group. Using discount rates appropriate for each set of SCC values, DOE estimates that the net present monetary value of the CO₂ emissions reduction (not including CO₂ equivalent emissions of other gases with global warming potential) is between \$0.679 billion and \$9.271 billion, with a value of \$3.047 billion using the central SCC case represented by \$40.6/t in 2015. DOE also estimates that the net present monetary value of the NO_x emissions reduction to be \$0.142 billion at a 7 percent discount rate, and \$0.326 billion at a 3 percent discount rate. DOE included a table that summarized the economic benefits and costs expected to result from the adopted standards for MREFs.

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

DOE certified that the standards for MREFs set forth in this direct 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 direct final rule. DOE states that it will transmit this certification to the Small Business Administration as required by the RFA.

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

DOE states that it reviewed this rule and determined that it does not contain a federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by the private sector. As a result, DOE states that no further assessment or analysis is required under UMRA.

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

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

DOE states that a notice of proposed rulemaking (NPR) that proposes identical energy efficiency standards was published in the same *Federal Register*. 81 Fed. Reg. 74,950 (October 28, 2016). A public comment period of at least 110 days was provided. Not later than 120 days after the date on which a direct final rule issued under this authority is published in the *Federal Register*, the Secretary of Energy shall withdraw the direct final rule if the Secretary receives one or more adverse public comments relating to the direct final rule or any alternative joint recommendation and based on the rulemaking record relating to the direct final rule, the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule under subsection 42 U.S.C. 6295(o) or any other applicable law. On withdrawal of a direct final rule, the Secretary shall proceed with the NPR published simultaneously with the direct final rule and publish in the *Federal Register* the reasons why the direct final rule was withdrawn. This direct final rule provision applies to the products at issue in this direct final rule.

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

DOE states that it has determined that MREFs are a covered product under EPCA. 81 Fed. Reg. 46,768 (July 18, 2016). Because MREFs are a covered product, manufacturers would need to 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 procedures for MREFs, including any amendments adopted for those test procedures. DOE states that it has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including MREFs. (See generally 10 C.F.R. part 429.) 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 PRA. This requirement has been approved by OMB under OMB control number 1910-1400. According to DOE, public reporting burden for the certification is estimated to average 30 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. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of PRA, unless that collection of information displays a currently valid OMB control number.

Statutory authorization for the rule

The direct final rule was promulgated under the authority of Energy Policy and Conservation Act (EPCA) of 1975, specifically, 42 U.S.C. § 6295(p)(4).

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

DOE states that the Administrator of the Office of Information and Regulatory Affairs (OIRA) in OMB has determined that the proposed regulatory action is an economically significant regulatory action. Accordingly, DOE has provided to OIRA an assessment of the benefits and costs anticipated from the regulatory action.

Executive Order No. 13,132 (Federalism)

DOE states that it has examined this direct final rule and has 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. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this direct final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. Therefore, according to DOE, no further action is required by the Order.