



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

B-330659

January 18, 2019

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

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

Subject: *Department of Energy: Nuclear Classification and Declassification*

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 "Nuclear Classification and Declassification" (RIN: 1992-AA49). It was published in the *Federal Register* as a final rule on December 21, 2018. 83 Fed. Reg. 66,000. We received the rule on January 3, 2019. The effective date of the final rule is January 22, 2019.

The final rule revises DOE's regulations concerning the requirements for classification and declassification of restricted data and formerly restricted data. Since 1997, when DOE issued the regulation, changes in legislation and DOE and national policies have rendered portions of the existing regulations outdated. In this final rule, DOE addresses these changes. Additional changes clarify requirements, as well as allow agencies more flexibility in implementing restricted data/formerly restricted data programs. DOE has also made revisions for clarity and reorganized for ease of use.

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 final rule was published in the *Federal Register* on December 21, 2018. 83 Fed. Reg. 66,000. The rule was received by both the House and the Senate on January 3, 2019. 165 Cong. Rec. H280 (daily ed. Jan. 8, 2019); 165 Cong. Rec. S271 (daily ed. Jan. 15, 2019). The rule has an effective date of January 22, 2019, and 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. 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

Julia C. Matta
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
“NUCLEAR CLASSIFICATION AND DECLASSIFICATION”
(RIN: 1992-AA49)

(i) Cost-benefit analysis

The Department of Energy (DOE) did not include a cost-benefit analysis in the final rule.

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

DOE certified the rule does 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 of 1995, 2 U.S.C. §§ 1532-1535

DOE stated the final rule does not contain an intergovernmental mandate, nor a mandate that may result in the expenditure of \$100 million or more in any year.

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

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

DOE published a proposed rule on April 23, 2018. 83 Fed. Reg. 17,710. DOE stated that it received one comment to which it responded in the final rule.

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

DOE stated the final rule does not contain a collection of information subject to PRA.

Statutory authorization for the rule

DOE stated it promulgated the rule under the Atomic Energy Act of 1954 codified at 42 U.S.C. § 2011 *et seq.*

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

DOE stated the Office of Management and Budget reviewed the final rule and determined it was not a significant regulatory action.

Executive Order No. 13,132 (Federalism)

DOE stated the final rule does not have a substantial 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.