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October 5, 2009

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 for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment*

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 for Certain Industrial Equipment: Energy Conservation Standards and Test Procedures for Commercial Heating, Air-Conditioning, and Water-Heating Equipment” (RIN: 1904-AB83). We received the rule on September 21, 2009. It was published in the *Federal Register* as a final rule on July 22, 2009. 74 Fed. Reg. 36,312.

The final rule amends energy conservation standards for commercial packaged boilers and adopts a new energy conservation standard for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps with a cooling capacity at or above 240,000 Btu/h and less than 760,000 Btu/h. In addition, this rule amends DOE’s test procedures for commercial packaged boilers.

This final rule was published on July 22, 2009, and received on September 21, 2009. This rule has a stated effective date of September 21, 2009. However, the rule also states that the standards for packaged boilers will apply starting on March 2, 2012, and the standards for water-cooled and evaporatively-cooled commercial package air conditioners and heat pumps will apply starting on January 10, 2011. The Congressional Review Act requires major rules to have a 60-day delay in their

effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Therefore, to the extent that this final rule's stated effective date of September 21, 2009, applies, the rule does not have the 60-day delay in effective date required by the Congressional Review Act.

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 and Regulatory Law
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 FOR CERTAIN
INDUSTRIAL EQUIPMENT: ENERGY CONSERVATION STANDARDS
AND TEST PROCEDURES FOR COMMERCIAL HEATING,
AIR-CONDITIONING, AND WATER-HEATING EQUIPMENT"
(RIN: 1904-AB83)

(i) Cost-benefit analysis

The Department of Energy (DOE) analyzed the costs and benefits of this final rule. DOE calculated the net present value for each of the ten classes of equipment at four different efficient levels and two discount rates, 3 percent and 7 percent. The net present values ranged from a negative \$576 million for small gas-fired hot water boilers at efficient level 4 and a 7-percent discount rate to a positive \$4.552 billion for large oil-fired steam boilers at efficiency level 4 and a 3-percent discount rate.

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

DOE certified that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, did not prepare an initial regulatory flexibility analysis.

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

DOE determined as part of the notice of proposed rulemaking for this rule that the rule does not contain an intergovernmental mandate. DOE also determined that this rule does not contain a mandate that may result in expenditures by state, local, or tribal governments of, in the aggregate, or by the private sector, of \$100 million or more in any one year.

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

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

On July 16, 2008, DOE published a notice on data availability and request for public comment as a preliminary step to its consideration of amended energy conservation standards. 73 Fed. Reg. 40,770. On March 20, 2009, DOE published a notice of proposed rulemaking. 74 Fed. Reg. 12,000. On June 3, 2009, DOE published a notice

of data availability and request for public comment on the environmental assessment. 74 Fed. Reg. 26,596. DOE received three comments from manufacturers, trade associations, and energy efficiency advocates. DOE also received a comment from the U.S. Department of Justice regarding the potential impact on competition of the final rule. DOE responded to those comments in the final rule. 74 Fed. Reg. 36,319–351.

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

DOE determined that this final rule imposes no information or recordkeeping requirements under the Act.

Statutory authorization for the rule

DOE stated that it promulgated this rule under the authority of sections 6291–6317 of title 42, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f

DOE determined that the environmental effects associated with this final rule are not significant, and, therefore, issued a Finding of No Significant Impact under NEPA and related Counsel on Environmental Quality and DOE regulations.

Federal Energy Administration Act of 1974, 15 U.S.C. § 788

DOE evaluated the updated standards in this final rule and determined that it is unable to conclude whether the standards fully comply with the requirements of section 32(b) of the Act (i.e., that they were developed in a manner that fully provides for public participation, comment, and review). DOE consulted with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards and neither recommended against the incorporation of the standards.

Treasury and General Government Appropriations Act, 1999, Pub. L. No. 105-277

DOE determined that this final rule will not have an impact on the autonomy or integrity of the family as an institution.

Treasury and General Government Appropriations Act, 2001, 44 U.S.C. § 3516 note

DOE reviewed this final rule and determined that it is consistent with the applicable policies and guidelines on disseminations of information to the public.

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

This rule was determined not to be a significant rule under the Order. Accordingly, the rule was not reviewed by the Office of Management and Budget under the Order.

Executive Order No. 12,630 (Property Rights)

DOE determined that this final rule will not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

Executive Order No. 12,988 (Civil Justice Reform)

DOE reviewed the drafting of this final rule and determined that, to the extent permitted by law, the final rule meets the relevant standards of the Order.

Executive Order No. 13,132 (Federalism)

DOE determined that this final rule will 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.

Executive Order No. 13,211 (Energy Supply)

DOE determined that this rule, as a proposed rule, will not have a significant adverse effect on the supply, distribution, or use of energy, and, therefore, is not a significant energy action.

Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664 (Dec. 16, 2004)

DOE stated that it conducted formal peer reviews of the energy conservation standards development process and analyses, and then prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses.