



United States Government Accountability Office  
Washington, DC 20548

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B-322279

August 30, 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 Furnaces and Residential Central  
Air Conditioners and Heat Pumps*

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 Furnaces and Residential Central Air Conditioners and Heat Pumps” (RIN: 1904-AC06). We received the rule on August 16, 2011. It was published in the *Federal Register* as a direct final rule on June 27, 2011. 76 Fed. Reg. 37,408. The direct final rule will be effective on October 25, 2011, unless adverse comment is received by October 17, 2011.

The final rule adopts amended energy conservation standards for residential furnaces and for residential central air conditioners and heat pumps. DOE published a notice of proposed rulemaking that proposes identical energy efficiency standards in the *Federal Register* on the same day. DOE states that if it receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, this final rule will be withdrawn, and DOE will proceed with the proposed rule.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 PROGRAM:  
ENERGY CONSERVATION STANDARDS FOR  
RESIDENTIAL FURNACES AND RESIDENTIAL  
CENTRAL AIR CONDITIONERS AND HEAT PUMPS"  
(RIN: 1904-AC06)

(i) Cost-benefit analysis

DOE prepared a cost-benefit analysis in conjunction with the direct final rule. DOE estimated that the economic impacts on individual consumers are generally positive, and estimated the average life-cycle cost (LCC) savings for consumers in various regions for each category of device covered under the direct final rule. For the standards in this rule on energy efficiency, DOE expects that manufacturers may lose 5.6 to 10.6 percent of their industry net present value (INPV), or approximately \$0.48 billion to \$0.90 billion. For the standards in this rule on standby mode and off mode power, DOE expects that manufacturers may lose up to 2.9 percent of their INPV, or approximately \$0.25 billion.

In determining the national benefits, DOE calculated the monetized value using a 7-percent discount rate, and 3-percent discount rate. Using a 7-percent discount rate, DOE estimated that the cost of the standards in this rule is \$527 million to \$773 million per year in increased equipment costs (\$566 million to \$825 per year using a 3-percent discount rate), while the annualized benefits are \$837 million to \$1106 million per year (\$1289 million to \$1686 million per year using a 3-percent discount rate) in reduced equipment operating costs, \$140 million to \$178 million (\$140 million to \$178 million using a 3-percent discount rate) in CO<sub>2</sub> reductions, and \$5.3 million to \$6.9 million (\$7.9 million to \$10.2 million using a 3-percent discount rate) in reduced NO<sub>x</sub> emissions. In this case, the net benefit amounts to \$456 million to \$517 million (\$871 million to \$1049 million per year using a 3-percent discount rate) per year. DOE also calculated annualized net benefits using a range of potential electricity and equipment price trend forecasts. Given the range of modeled price trends, the range of net benefits in this case is from \$295 million to \$623 million per year (\$601 million to \$1260 million per year using a 3-percent discount rate). The low estimate corresponds to a scenario with a low electricity price trend and a constant real price trend for equipment, while the high estimate reflects a high electricity price trend and a strong declining real price trend for equipment.

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

DOE prepared a final regulatory flexibility analysis in conjunction with the final rule in which it discussed the potential impacts on small residential furnace, central air conditioner, and heat pump manufacturers and alternatives that could minimize these impacts. DOE determined that there are only four domestic small business manufacturers of central air conditioning products, but none of the efficiency levels applicable to the products made by the small manufacturers are subject to change in the direct final rule. Therefore, DOE does not anticipate any adverse impacts on these manufacturers. DOE determined that there are five domestic small business manufacturers of residential furnace products. All of these small business manufacturers have product lines that meet the efficiency level adopted in the direct final rule, so DOE believes that the adopted standard level would be unlikely to cause the small manufacturer to incur significant conversion costs.

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

DOE determined that the final rule will not result in the expenditure of more than \$100 million or more in any given year by state, local, or tribal governments. DOE determined that the direct final rule may impose expenditures of more than \$100 million on the private sector and that such expenditures may include investment in research and development and in capital expenditures by furnace, central air conditioner, and heat pump manufacturers in the years between the final rule and the compliance date for the new standards, and incremental additional expenditures by consumers to purchase higher-efficiency furnace, central air conditioner, and heat pump products starting at the compliance date for the applicable standard.

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

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

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA 2007), and codified at 42 U.S.C. 6295(p)(4), grants DOE the authority to issue a direct final rule establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view. DOE used this authority in issuing the direct final rule, and also, as required under EPCA, published simultaneously with the direct final rule a notice of proposed rulemaking with identical energy standards and provided a public comment period of at least 110 days. 76 Fed. Reg. 37,549. If by October 17, 2011, DOE has received one or more adverse comments or an alternative joint recommendation relating to the

direct final rule, DOE will need to determine whether the comments provide a reasonable basis for withdrawal, and if so, DOE must withdraw the direct final rule and proceed with the simultaneously published proposed rulemaking. DOE is required to publish in the *Federal Register* the reason why a direct final rule was withdrawn.

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

The final rule contains collection of information requirements under the Paperwork Reduction Act. DOE estimates that the public reporting burden for the certification 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. DOE has submitted the requirement to the Office of Management and Budget (OMB) for approval.

#### Statutory authorization for the rule

The direct final rule is authorized by the Energy Policy and Conservation Act of 1975, as amended, as codified at 42 U.S.C. §§ 6291-6309.

#### 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)

DOE states that it followed its policy for the intergovernmental consultation process in developing the rule. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of the direct final rule. States can petition DOE for exemption from such preemption to the extent, and based on the criteria, set forth in EPCA. (42 U.S.C. § 6297).