



United States Government Accountability Office
Washington, DC 20548

B-323560

June 26, 2012

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 Clothes Washers*

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 (Energy), entitled “Energy Conservation Program: Energy Conservation Standards for Residential Clothes Washers” (RIN: 1904-AB90). We received the rule on June 12, 2012. It was published in the *Federal Register* as a direct final rule on May 31, 2012, with a stated effective date of September 28, 2012. 77 Fed. Reg. 32,308.

The final rule amends the energy conservation standards for residential clothes washers. The Energy Policy and Conservation Act, as amended, (EPCA) prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential clothes washers. EPCA also requires Energy to determine whether amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. Energy has determined that amending the energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified, and therefore is amending the standards.

Enclosed is our assessment of Energy’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 Energy 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 CLOTHES WASHERS"
(RIN: 1904-AB90)

(i) Cost-benefit analysis

The Department of Energy (Energy) analyzed the costs and benefits of this direct final rule. Using a 7 percent discount rate for benefits and costs other than CO₂ reductions (for which Energy used a 3 percent discount rate along with the social cost of carbon (SCC) series corresponding to a value of \$22.3/ton in 2010) Energy estimates that the cost of the standards for clothes washers in today's rule is \$185 million per year in increased equipment costs, while the annualized benefits are \$1,234 million per year in reduced equipment operating costs, \$141.7 million in CO₂ reductions, and \$5.4 million in reduced NO_x emissions. In this case, the net benefit amounts to \$1.20 billion per year. Using a 3 percent discount rate for all benefits and costs and the SCC series corresponding to a value of \$22.3/ton in 2010, Energy estimates that the cost of the standards for clothes washers in today's rule is \$212 million per year in increased equipment costs, while the benefits are \$1,808 million per year in reduced operating costs, \$141.7 million in CO₂ reductions, and \$8.0 million in reduced NO_x emissions. In this case, the net benefit amounts to \$1.75 billion per year.

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

As part of this direct final rule, Energy published an initial regulatory flexibility analysis including a description of reasons for the rule; a statement of the objectives and legal basis of the rule; a description and estimated number of small entities regulated by the rule; a description and estimate of the compliance requirements of the rule; duplication, overlap, and conflict with other rules; and significant alternatives to the rule. Energy states that it will consider any comments on the initial regulatory flexibility analysis and will publish a final regulatory flexibility analysis including responses to any comments received in a separate notice at the end of the 110-day comment period.

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

Energy has concluded that this direct final rule would likely result in a final rule that could impose expenditures of \$100 million or more on the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by residential clothes washer manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency residential clothes washers.

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

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

Energy published this regulatory action as a direct final rule. On the same day Energy published the direct final rule, it also published a proposed rule. 77 Fed. Reg. 32,381 (May 31, 2012). Energy is accepting comments on the proposed rule through September 18, 2012. Energy stated that if it receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, Energy will publish a notice withdrawing the final rule and will proceed with the proposed rule. Otherwise the direct final rule has an effective date of September 28, 2012.

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

Manufacturers of residential clothes washers must certify to Energy that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the Energy test procedures for residential clothes washers, including any amendments adopted for those test procedures. Energy has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential clothes washers. 76 Fed. Reg. 12,422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping has been approved by the Office of Management and Budget (OMB) under OMB Control Number 1910-1400. Public reporting burden for the certification is estimated 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.

Statutory authorization for the rule

Energy is promulgating this direct final rule under the authority of sections 6291 to 6317 of title 42, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347

Energy has determined that this direct final rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. The rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, Energy has made a CX determination for this rulemaking, and did not prepare an Environmental Assessment or Environmental Impact Statement for this rule.

Executive Order No. 12,630 (Energy Supply, Distribution, or Use)

Energy has concluded that this direct final rule is not a significant energy action because the amended standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

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

Energy determined that this direct final rule is an “economically significant regulatory action” under the Order. Accordingly, Energy presented to OMB for review the draft rule and other documents prepared for this rulemaking, including the regulatory impact analysis, and included these documents in the rulemaking record.

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

Energy determined that it completed the required review and that, to the extent permitted by law, this direct final rule meets the relevant standards of the Order.

Executive Order No. 13,132 (Federalism)

On March 14, 2000, Energy published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 Fed. Reg. 13,735. According to Energy, EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of today’s direct final rule and states can petition Energy for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. § 6297. Energy determined that no further action is required by the Order.