



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

B-325563

February 26, 2014

The Honorable Mary L. Landrieu
Chair
The Honorable Lisa Murkowski
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Metal Halide Lamp Fixtures*

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 Metal Halide Lamp Fixtures” (RIN: 1904-AC00). We received the rule on February 11, 2014. It was published in the *Federal Register* as a final rule on February 10, 2014. 79 Fed. Reg. 7746.

The final rule adopts more-stringent energy conservation standards for metal halide lamp fixtures (MHLFs). The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including MHLFs. EPCA also requires Energy to determine whether more-stringent standards would be technologically feasible and economically justified and would save a significant amount of energy. Energy has determined that the new and amended energy conservation standards for this equipment would result in significant conservation of energy and are technologically feasible and economically justified.

The final rule has an effective date of April 11, 2014. 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 rule was published in the *Federal Register* on February 10, 2014, but we did not receive the rule until February 11, 2014. Therefore, the final rule does not have the required 60-day delay in its effective date.

Compliance with the new and amended standards established for MHLFs in the final rule is required by February 10, 2017. The incorporation by reference of certain publications listed in this rule will be approved by the Director of the *Federal Register* on April 11, 2014.

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. With the exception of the 60-day delay in effective date, 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
METAL HALIDE LAMP FIXTURES
(RIN: 1904-AC00)

(i) Cost-benefit analysis

Based on the analyses culminating in the final rule, Energy found the benefits to the nation of the standards (energy savings, customer life-cycle cost (LCC) savings, positive net economic savings (NPV) of customer benefit, and emission reductions) outweigh the burdens (loss of industry net present value (INPV) and LCC increases for some users of this equipment). Energy has concluded that the standards in the final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in significant conservation of energy.

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

Energy reviewed the notice of proposed rulemaking (NOPR) published in August 2013 and the final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies required by Executive Order 13,272, "Proper Consideration of Small Entities in Agency Rulemaking." As a result of that review, Energy has prepared a final regulatory flexibility analysis (FRFA) for MHLFs and ballasts, a copy of which Energy states that it will transmit to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. § 605(b). Energy presents and discusses the FRFA, which describes impacts on small MHLF and ballast manufacturers and discusses alternatives that could minimize these impacts.

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

Energy has concluded that the final rule would likely require expenditures of \$100 million or more on the private sector. Section 202 of UMRA authorizes a federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. 2 U.S.C. § 1532(c). Energy states that the content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap with the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12,866. According to Energy, the Supplementary Information section of the notice of final rulemaking and the technical support document (TSD) for the final rule respond to those requirements. Additionally, Energy has included a full discussion of the considered alternatives in the "Regulatory Impact Analysis" section of the TSD, pursuant to section 205 of UMRA.

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

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

On August 20, 2013, Energy published a proposed rule proposing new and amended energy conservation standards for MHLFs. 78 Fed. Reg. 51,463. In conjunction with the NOPR, Energy states that it also published on its website the complete TSD for the proposed rule, which incorporated the analyses Energy conducted and technical documentation for each analysis. According to Energy, the NOPR TSD was accompanied by the LCC spreadsheet, the national impact analysis spreadsheet, and the manufacturer impact analysis (MIA) spreadsheet—all of which are available on Energy’s website. Energy notes that the proposed standards were as shown in Table II.2 of the proposed rule.

On September 27, 2013, Energy held a NOPR public meeting to hear oral comments on and solicit information relevant to the proposed rule (NOPR public meeting). Energy considered the comments received in response to the NOPR after its publication and at the NOPR public meeting when developing the final rule and responds to these comments in the final rule.

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

Energy states that manufacturers of MHLFs must certify to Energy that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to Energy’s test procedures for MHLFs, 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 MHLFs. 76 Fed. Reg. 12,422. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by Office of Management and Budget (OMB) under PRA. Energy states that this requirement has been approved by the OMB under OMB control number 1910–1400. Energy indicates that the 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 states that the final rule is authorized under the authority in Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), as amended by the Energy Independence and Security Act of 2007 (EISA 2007).

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

Energy has determined that this regulatory action is an “economically significant regulatory action.” Accordingly, section 6(a)(3) of the Executive Order requires that Energy prepare a regulatory impact analysis (RIA) on the final rule and that the Office of Information and Regulatory Affairs (OIRA) in OMB review this rule. Energy states that it presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and has included these documents in the rulemaking record.

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 regulations that have federalism implications. 65 Fed. Reg. 13,735. Energy notes that EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the equipment that is the subject of the final rule. 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 states that no further action is required by the Order.