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United States Government Accountability Office
Washington, DC 20548

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December 19, 2007

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers*

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 Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers” (RIN: 1904-AA78). We received the rule on December 5, 2007. It was published in the *Federal Register* as a final rule on November 19, 2007. 72 Fed. Reg. 65,136.

The final rule revises the energy conservation standards for residential furnaces and boilers. DOE has determined that the revised standards will result in significant conservation of energy, are technologically feasible, and are economically justified.

The final rule is effective on January 18, 2008. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). Congress and our Office did not receive the rule from the DOE until December 5, 2007, which means that the final rule will not have the required 60-day delay in its effective date, although the standards established in the final rule have a compliance date of November 19, 2015.

Enclosed is our assessment of the 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 indicates that, except for the delay in the effective date, DOE complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Michael W. Bowers
Attorney, Office of Assistant General 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 CONSUMER PRODUCTS:
ENERGY CONSERVATION STANDARDS FOR
RESIDENTIAL FURNACES AND BOILERS"
(RIN: 1904-AA78)

(i) Cost-benefit analysis

DOE estimates that the economic impacts on consumers from the final rule (*i.e.*, the average life-cycle cost savings) are positive. DOE estimates the impact of the revised standards on the residential furnace and boiler industry to be between a 4.0-percent loss and a 2.7-percent loss (-\$74 million to -\$48 million). Based on DOE's interviews with the major manufacturers of residential furnaces and boilers, DOE estimates minimal plant closings or loss of employment as a result of the revised standards. DOE estimates the revised standards will save approximately 0.25 quads of energy over 24 years. DOE concludes that the benefits of the standards (energy savings, consumer savings, national net present value increases, and emissions reductions) to the Nation outweigh their costs.

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

DOE certified that both the proposed and final rules would "have no significant economic impact on a substantial number of small entities" and, therefore, did not prepare a 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 that the final rule does not contain either an intergovernmental or private sector mandate, as defined in Title II, of more than \$100 million (currently adjusted for inflation to \$122 million) 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.*

DOE published an advance notice of proposed rulemaking (ANOPR) in the *Federal Register* on September 28, 1990. 55 Fed. Reg. 39,624. A second ANOPR was published on July 29, 2004. 69 Fed. Reg. 45,420. On October 6, 2006, DOE published

a notice of proposed rulemaking in the *Federal Register*. 71 Fed. Reg. 59,203. On October 30, 2006, DOE held a public meeting in Washington, D.C. to hear oral comments relevant to the proposed rule. DOE also received more than 150 written comments from a diverse set of parties, including manufacturers, states, energy conservation advocates, consumer advocates, and utilities. DOE addressed the comments in the final rule.

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

DOE states that the final rule imposes no new information or recordkeeping requirements.

Statutory authorization for the rule

The final rule is promulgated under authority provided in the Energy Policy and Conservation Act (EPCA) as amended, 42 U.S.C. §§ 6291-6309. EPCA directed DOE to consider amending the energy conservation standards for residential furnaces and boilers, 42 U.S.C. § 6295(f)(3)(B). EPCA also states that any amended standard must be designed to “achieve the maximum improvement in energy efficiency . . . which the Secretary determines is technologically feasible and economically justified.” 42 U.S.C. § 6295(o)(2)(A). The final rule is also promulgated under authority provided in 28 U.S.C. § 2461 note.

Executive Order No. 12,866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13,132 (Federalism)

DOE states that the 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.