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January 26, 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 Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program for Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers Without Doors; and Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers*

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 Commercial and Industrial Equipment: Energy Conservation Standards for Commercial Ice-Cream Freezers; Self-Contained Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers Without Doors; and Remote Condensing Commercial Refrigerators, Commercial Freezers, and Commercial Refrigerator-Freezers” (RIN: 1904-AB59). We received the rule on January 12, 2009. It was published in the *Federal Register* as a final rule on January 9, 2009. 74 Fed. Reg. 1092. The final rule has a stated effective date of March 10, 2008, and the standards established in the rule will be applicable starting January 1, 2012.

The final rule imposes new energy conservation standards for commercial refrigeration equipment, which includes commercial ice-cream freezers; self-contained commercial refrigerators, commercial freezers, and commercial refrigerator-freezers without doors; and remote condensing commercial refrigerators, commercial freezers, and commercial refrigerator-freezers. DOE is

promulgating this rule because it has determined that the energy conservation standards contained in this rule will result in a significant conservation of energy, are technologically feasible, and economically justified.

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 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
Associate General Counsel

Enclosure

cc: Michael W. Bowers
Attorney, Office of 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 COMMERCIAL AND INDUSTRIAL
EQUIPMENT: ENERGY CONSERVATION STANDARDS FOR COMMERCIAL ICE-
CREAM FREEZERS; SELF-CONTAINED COMMERCIAL REFRIGERATORS,
COMMERCIAL FREEZERS, AND COMMERCIAL REFRIGERATOR-FREEZERS
WITHOUT DOORS; AND REMOTE CONDENSING COMMERCIAL
REFRIGERATORS, COMMERCIAL FREEZERS, AND COMMERCIAL
REFRIGERATOR-FREEZERS"
(RIN: 1904-AB59)

(i) Cost-benefit analysis

The Department of Energy (DOE) analyzed the costs and benefits of this final rule. DOE estimates that this final rule will save approximately 1.035 quadrillion British thermal units of energy over 30 years between 2012 and 2042. This cumulative energy savings will result in a reduction in carbon dioxide emissions by 52.6 million tons, in nitrogen oxide emissions by 3.64 to 89.97 kilotons, and in mercury emissions of between 0 and 1.38 tons. DOE estimates that the annual cost of this final rule in increased equipment and installations costs to be \$95 million at a 7-percent discount rate and \$81 million at a 3-percent discount rate. DOE estimates that the annual benefits of this final rule include \$229 million in reduced equipment operating costs at a 7-percent discount rate and \$253 million at a 3-percent discount rate. DOE further estimates that the net present value at a 7-percent discount rate of the emission reductions is between \$0 and 469 million for carbon dioxide, between \$394,000 and 9.7 million for nitrogen oxide, and between 0 and \$284,000 for mercury. DOE estimates that the net present value at a 3 percent discount rate of emission reductions is between \$0 and \$955 for carbon dioxide, between \$800,000 and \$20.5 million for nitrogen oxide, and between \$0 and \$560,000 for mercury.

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

DOE determined that it could not certify that the proposed standards would have no significant economic impact on a substantial number of small entities. DOE made this determination because of the potential impacts of the proposed standard levels on commercial refrigeration equipment manufacturers generally, including small businesses. Accordingly, DOE prepared a Final Regulatory Flexibility Analysis that includes a discussion of the reasons for the final rule; a discussion of the objectives of, and legal basis for, the rule; a description and estimated number of small entities regulated; a description and estimate of compliance requirements; significant issues

raised by public comments; and steps DOE took to minimize the economic impact on small businesses. DOE identified nine small commercial refrigeration equipment manufacturers and conducted on-site interviews with two of them.

(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 this final rule does not contain any mandates on state, local, or tribal governments. However, DOE also concluded that it may result in the expenditure of \$100 or more in one year by the private sector. In the notice of proposed rulemaking, DOE published a statement as to the basis, costs, benefits, and economic impacts of the proposed rule and identified and considered regulatory alternatives in compliance with the Act. 73 Fed. Reg. 50,132.

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

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

DOE promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On April 25, 2006, DOE published a notice of a public meeting and made available the framework document for this rulemaking. 71 Fed. Reg. 23,876. The public meeting was held on May 16, 2006, at which the framework documents was discussed and public comments were accepted. On July 26, 2007, DOE published and advance notice of proposed rulemaking. 72 Fed. Reg. 41,161. DOE held a second public meeting on this rulemaking on August 23, 2007, and accepted further comments. DOE published the proposed rule on August 25, 2008. 73 Fed. Reg. 50,072. DOE received further written comments on the proposed rule and held a third public meeting on September 23, 2008. DOE responded to those comments in this final rule. 74 Fed. Reg. 1096–1136.

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

This final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

DOE promulgated this final rule under the authority of sections 6291 to 6317 of title 42, United States Code.

National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. sections 4321–4370f

DOE determined that the environmental effects associated with this final rule are insignificant and issued a Finding of No Significant Impact under the Act.

Executive Order No. 12,630 (Taking of Private Property)

DOE determined that this final rule will not result in a taking of private property that might require compensation under the Fifth Amendment to the U.S. Constitution.

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

DOE determined that this final rule is an economically significant rule under the Order and has submitted the rule to the Office of Management and Budget for review.

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

DOE reviewed this final rule under the Order and determined that it meets the applicable standards of the Order to minimize litigation, eliminate ambiguity, promote simplicity, and reduce burden.

Executive Order No. 13,132 (Federalism)

DOE determined that this final rule will not have a substantial direct effect on states, the relationship between the federal government and states, or on the distribution of power and responsibilities among the levels of government.

Executive Order No. 13,211 (Energy Supply Distribution, or Use)

DOE determined that this final rule is not a significant energy action under the Order and therefore did not prepare a Statement of Energy Effects.