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United States Government Accountability Office
Washington, DC 20548

B-324716

May 6, 2013

The Honorable Ron Wyden
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 Distribution Transformers*

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 Distribution Transformers” (RIN: 1904-AC04). We received the rule on April 24, 2013. It was published in the *Federal Register* as a final rule on April 18, 2013. 78 Fed. Reg. 23,336.

The final rule adopts more stringent energy conservation standards for distribution transformers. DOE has determined that the amended energy conservation standards for this equipment would result in significant conservation of energy and are technologically feasible and economically justified. 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 distribution transformers. EPCA also requires DOE to determine whether more stringent standards would be technologically feasible and economically justified, and would save a significant amount of energy.

Compliance with the amended standards established for distribution transformers in this final rule is required as of January 1, 2016.

The final rule has an effective date of June 17, 2013. 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 April 18, 2013, but we did not receive the rule until April 24, 2013. Therefore, the final rule does not have the required 60-day delay in its effective date.

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, with the exception of the 60-day delay in effective date requirement.

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 DISTRIBUTION TRANSFORMERS"
(RIN: 1904-AC04)

(i) Cost-benefit analysis

DOE summarized the national economic costs and benefits expected to result from the final rule. According to DOE, in 2011 dollars total benefits are \$10.77 billion, discounted at 7 percent, and \$22.8 billion, discounted at 3 percent while net benefits, including CO₂ and NO_x reduction monetized value, are \$7.88 billion discounted at 7 percent, and \$17.6 billion, discounted at 3 percent. DOE also states that the incremental installed costs in 2011 dollars are \$289 billion, discounted at 7 percent, and \$5.22 billion, discounted at 3 percent.

DOE states that the benefits and costs of the final rule, for equipment sold in 2016–2045, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) the annualized national economic value of the benefits from customer operation of equipment that meets today's standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing customer net present value), and (2) the annualized monetary value of the benefits of emission reductions, including CO₂ emission reductions.

DOE also estimated annualized costs and benefits of the final rule. According to DOE, using a 7 percent discount rate for benefits and costs (other than CO₂ reduction, for which DOE used a 3 percent discount rate along with the Social Cost of Carbon (SCC) series corresponding to a value of \$22.3/ton in 2011), the cost of the standards in today's rule is \$266 million per year in increased equipment costs, while the benefits are \$581 million per year in reduced equipment operating costs, \$237 million in CO₂ reductions, and \$8.60 million in reduced NO_x emissions. In this case, the net benefit amounts to \$561 million per year. DOE states that using a 3 percent discount rate for all benefits and costs (and the SCC series corresponding to a value of \$22.3/ton in 2011), the cost is \$282 million per year in increased equipment costs, while the benefits are \$983 million per year in reduced operating costs, \$237 million in CO₂ reductions, and \$12.67 million in reduced NO_x emissions. In this case, DOE notes that the net benefit amounts to \$950 million per year.

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

DOE used the Small Business Administration's small business size standards to determine whether any small entities would be subject to the requirements of the rule. In the February 2012 notice of proposed rulemaking (NPR), DOE identified approximately 10 liquid-immersed distribution transformer manufacturers, 14 low-voltage dry-type (LVDT) manufacturers, and 17 medium-voltage dry-type (MVDT) manufacturers of covered equipment that can be considered small businesses. 77 Fed. Reg. 7282. DOE explicitly considered the impacts on small manufacturers of liquid immersed and dry-type transformers in selecting the trial standard levels (TSLs), rather than selecting a higher trial standard level. It is DOE's belief that levels at TSL 3 or higher would place excessive burdens on small manufacturers of MVDT transformers, as would TSL 2 or higher for liquid-immersed and MVDT transformers. Because DOE believes that the TSLs selected are economically justified (including consideration of small business impacts), the reduced impact on small businesses that would have been realized in moving to lower efficiency levels was not considered in DOE's decision (but the reduced impact on small businesses that is realized in moving down to TSL 2 from TSL 3 (in the case of MVDT and LVDT) and to TSL 1 from TSL 2 (in the case of liquid-immersed) was explicitly considered in the weighing of benefits and burdens).

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

On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 Fed. Reg. 12,820. DOE has concluded that this final rule would likely require expenditures of \$100 million or more by the private sector. According to DOE, such expenditures may include: (1) investment in research and development and in capital expenditures by distribution transformer 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 distribution transformers, 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.

DOE published a NPR on February 10, 2012, which proposed amended standards for all three transformer types. 77 Fed. Reg. 7282. In the NPR, DOE sought comment on a number of issues related to the rulemaking. Following publication of the NPR, DOE received several comments expressing a desire to see some of the NPR suggestions extended and analyzed for liquid-immersed distribution transformers. In response, DOE generated a supplementary NPR

analysis with three additional TSLs. According to DOE, the three TSLs presented were based on possible new equipment classes for pole-mounted distribution transformers, network/vault-based distribution transformers, and those with high basic impulse level ratings. On June 4, 2012, DOE published a notice announcing the availability of this supplementary analysis and of a public meeting to be held on June 20, 2012, to present and receive feedback on it. DOE also generated an additional TSL in a June 18, 2012, analysis published on DOE's website.

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

Manufacturers of distribution transformers must certify to DOE that their equipment complies with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for distribution transformers, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including distribution transformers. 76 Fed. Reg. 12,422. The collection of information requirement for the certification and recordkeeping is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). According to DOE, this requirement has been approved by OMB under OMB control number 1910-1400. DOE notes that 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

EPA states that the final rule is authorized by Title III, Part B of EPCA, Public Law 94-163 (42 U.S.C. §§ 6291-6309, as codified), which established the Energy Conservation Program for "Consumer Products Other Than Automobiles." Additionally, Part C of Title III of EPCA (42 U.S.C. §§ 6311-6317) established a similar program for "Certain Industrial Equipment," including distribution transformers. The Energy Policy Act of 1992 (EPACT 1992), Public Law 102-486, amended EPCA and directed the Department of Energy to prescribe energy conservation standards for those distribution transformers for which DOE determines such standards would be technologically feasible, economically justified, and would result in significant energy savings. 42 U.S.C. § 6317(a). The Energy Policy Act of 2005 (EPACT 2005), Public Law 109-58, amended EPCA to establish energy conservation standards for LVDT distribution transformers. 42 U.S.C. § 6295(y).

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

DOE has determined that the final rule is an “economically significant regulatory action.” Accordingly, DOE prepared a regulatory impact analysis for OMB review. DOE’s assessments prepared pursuant to the Order can be found in the technical support document for this rulemaking.

Executive Order No. 13,132 (Federalism)

On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it would follow in the development of regulations having federalism implications. 65 Fed. Reg. 13,735. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of the final rule. DOE explains that states can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. 42 U.S.C. § 6297.