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February 25, 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 External Power Supplies*

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 External Power Supplies” (RIN: 1904-AB57). We received the rule on February 10, 2014. It was published in the *Federal Register* as a final rule on February 10, 2014, with an effective date of April 11, 2014. 79 Fed. Reg. 7846.

The final rule, pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), as amended, amends the energy conservation standards that currently apply to certain external power supplies (EPS) and establishes new energy conservation standards for other external power supplies that are currently not required to meet such standards. Through its analysis, Energy has determined that these changes satisfy EPCA’s requirements that any new and amended energy conservation standards for these products result in the significant conservation of energy and be both technologically feasible and economically justified.

Compliance with the new and amended standards established for EPSs in the final rule is February 10, 2016. The incorporation by reference of a certain publication 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. 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
EXTERNAL POWER SUPPLIES"
(RIN: 1904-AB57)

(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, consumer life-cycle cost (LCC) savings, positive net economic savings (NPV) of consumer benefit, and emission reductions) outweigh the burdens (loss of industry net present value (INPV) and LCC increases for some users of these products). 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

As discussed in the March 2012 notice of proposed rulemaking (NOPR), Energy notes that it was unable to identify any EPS original design manufacturer (ODMs) with domestic manufacturing. According to Energy, information obtained from manufacturer interviews and Energy's research indicate that all EPS manufacturing takes place abroad. Energy notes that it also sought comment on this issue. While Energy received comments from small businesses application manufacturers who import EPSs, Energy states that it did not receive any comments from any small business EPS ODMs or any comments challenging the view that all EPS manufacturing is conducted abroad. Since Energy was not able to find any small EPS ODMs, Energy certifies that the final rule will not have a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

(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 "Regulatory Impact Analysis" section of 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 March 27, 2012, Energy published a notice of proposed rulemaking. 77 Fed. Reg. 18,478. Shortly after, Energy also published on its website the complete TSD for the proposed rule, which incorporated the complete analyses Energy conducted and technical documentation for each analysis. The NOPR TSD included the LCC spreadsheet, the national impact analysis spreadsheet, and the manufacturer impact analysis (MIA) spreadsheet—all of which are available in the docket for this rulemaking. In the March 2012 NOPR, in addition to proposing potential standards for battery chargers, Energy proposed amended energy conservation standards for EPSs. On May 2, 2012, Energy held a public meeting to solicit comment and information from the public relevant to the proposed rule. Energy received many written comments in response to the March 2012 NOPR. Energy summarizes and addresses the issues these commenters raised that relate to the EPSs in the final rule.

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

Energy states that manufacturers of EPSs must certify to Energy that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the Energy test procedures for EPSs, including any amendments adopted for those test procedures. 76 Fed. Reg. 12,422. Energy has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including Class-A EPSs. Energy states that it will modify the certification requirements specific to non-class A EPSs (multiple-voltage and high-voltage) in a separate certification rulemaking prior to the effective date for the standards prescribed in the final rule. Energy indicates that 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 PRA. Energy states that this requirement has been approved by OMB under OMB control number 1910–1400. According to Energy, 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.