



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

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July 12, 2016

The Honorable Lisa Murkowski
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Fred Upton
Chairman
The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Dehumidifiers*

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 Dehumidifiers" (RIN: 1904-AC81). We received the rule on June 28, 2016. It was published in the *Federal Register* as a final rule on June 13, 2016. 81 Fed. Reg. 38,338.

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

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). This final rule was published in the *Federal Register* on June 13, 2016, and both we and the Congress received the rule on June 28, 2016. 81 Fed. Reg. 38,338. This final rule has a stated effective date of August 12, 2106, although the compliance date for the amended standards is required on and after June 13, 2019. Therefore, to the extent that there are provisions which purport to be effective on August 12, 2016, this final rule does not have the required 60-day delay in effective date under CRA.

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. Other than the 60-day delay in effectiveness, our review of the procedural steps taken 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
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 ENERGY
ENTITLED
“ENERGY CONSERVATION PROGRAM: ENERGY CONSERVATION
STANDARDS FOR DEHUMIDIFIERS”
(RIN: 1904-AC81)

(i) Cost-benefit analysis

The Department of Energy (DOE) provided an analysis of the costs and benefits of the final rule. DOE’s analyses indicate that the adopted energy conservation standards for dehumidifiers would save a significant amount of energy. Relative to the case without amended standards the lifetime energy savings for dehumidifiers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2019–2048), amount to 0.30 quadrillion Btu (quads). This represents a savings of 7.4 percent relative to the energy use of these products in the case without amended standards (referred to as the no-new standards case). The cumulative net present value (NPV) of total consumer costs and savings of the standards for dehumidifiers ranges from \$1.28 billion (at a 7 percent discount rate) to \$2.71 billion (at a 3 percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for dehumidifiers purchased in 2019–2048.

In addition, the standards for dehumidifiers are projected to yield significant environmental benefits. DOE estimates that the standards would result in cumulative greenhouse gas emission reductions. DOE estimates that the net present monetary value of the carbon dioxide (CO₂) emissions reduction (not including CO₂ equivalent emissions of other gases with global warming potential) is between \$0.1 billion and \$1.9 billion, with a value of \$0.6 billion using the central social cost of carbon case represented by \$40.0/t in 2015. DOE also estimates that the net present monetary value of the nitrogen oxides emissions reduction to be \$0.03 billion at a 7 percent discount rate, and \$0.07 billion at a 3 percent discount rate. DOE summarized the national economic benefits and costs expected to result from the adopted standards for dehumidifiers in a table in the final rule, and the estimates of annualized benefits and costs of the adopted standards in another table in the rule.

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

DOE identified five manufacturers as domestic manufacturers that meet the Small Business Administration’s definition of a small business and manufacture products covered by the final rule. In 2015, 1.5 percent of the dehumidifiers sold in the United States market consisted of high-capacity portable and whole-home dehumidifiers, which are primarily manufactured by small business manufacturers. It is estimated that small, domestic manufacturers account for 50 percent of high-capacity portable U.S. shipments and the overwhelming majority of whole-home dehumidifier U.S. shipments. The two small, domestic manufacturers that account for the greatest share of the combined high-capacity portable and whole-home market segments manufacture both high-capacity portable and whole-home products. Of the remaining small, domestic manufacturers, one produces only high-capacity portable dehumidifiers and two

produce only whole-home dehumidifiers. Before issuing the final rule, DOE attempted to contact all the small business manufacturers of dehumidifiers identified. Two of these small business manufacturers responded to DOE and consented to being interviewed as part of the manufacturing impact analysis. DOE also obtained information about small business impacts while interviewing large manufacturers. DOE included tables in the final rule which summarized the calculated capital conversion costs and product conversion costs for an average small manufacturer versus an average large manufacturer. To provide context on the size of the conversion costs relative to the size of the businesses, DOE provided a table summarizing the conversion costs relative to annual revenue and annual operating profit at each trial standard level (TSL) for the average small manufacturer and the average large manufacturer.

According to DOE, at the established standard level (TSL 2) DOE estimates total conversion costs associated with amended energy conservation standards for an average small manufacturer to be \$1.01 million, which is approximately 24.9 percent of annual revenue and 419.1 percent of annual operating profit. DOE states that this suggests that an average small manufacturer would need to reinvest roughly 139.7 percent of its operating profit per year over the conversion period to comply with standards. At this TSL, the standard level for whole-home dehumidifiers is the baseline. Accordingly, three of the five small, domestic manufacturers may incur costs associated only with the high-capacity portable segment of their business. The total conversion costs associated with new and amended energy conservation standards for an average large manufacturer is \$2.79 million, which is approximately 0.8 percent of annual revenue and 13.1 percent of annual operating profit. According to DOE, this suggests that an average large manufacturer would need to reinvest roughly 4.4 percent of its operating profit per year over the 3-year conversion period. DOE also analyzed significant alternatives to the rule.

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

DOE has concluded that this final rule does not require expenditures of \$100 million or more in any one year on the private sector. DOE states that the final rule is likely to result in expenditures of \$100 million or more, but there is no requirement that mandates that result. DOE explained that such expenditures may include: (1) investment in research and development and in capital expenditures by dehumidifier 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 dehumidifiers, starting at the compliance date for the applicable standard. DOE stated that a discussion of the alternatives considered by DOE is presented in chapter 17 of the Technical Support Document for this final rule.

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

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

On June 3, 2015, DOE published a notice of proposed rulemaking (June 2015 NOPR) and notice of public meeting. 80 Fed. Reg. 31,645. On July 7, 2015, DOE held a public meeting to discuss the issues detailed in the June 2015 NOPR. Interested parties commented on various aspects of the proposed rule and submitted supplemental written comments. Following the public meeting, DOE gathered additional information and performed additional analyses to supplement the analyses presented in the June 2015 NOPR. DOE states that it considered the comments received since publication of the June 2015 NOPR, including those received at the NOPR public meeting, in developing amended standards for dehumidifiers.

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

DOE states that manufacturers of dehumidifiers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for dehumidifiers, 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 dehumidifiers. (See generally 10 C.F.R. part 429.) 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. This requirement has been approved by OMB under OMB control number 1910-1400. Public reporting burden for the certification is estimated to average 30 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

The final rule is promulgated under the authority of title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94-163 (42 U.S.C. §§ 6291-6309, as codified), specifically, 42 U.S.C. § 6295(cc), and 42 U.S.C. § 6295(m).

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

The final rule was reviewed by OMB and found to be an economically significant regulatory action under Executive Order 12,866. DOE states that it has also reviewed this regulation pursuant to Executive Order 13,563, and it believes that the final rule is consistent with the Order's principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

Executive Order No. 13,132 (Federalism)

DOE states that it has examined this rule and has determined that it would 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. EPCA governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this final rule. According to DOE, 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). Therefore, DOE states that no further action is required by Executive Order 13,132.