

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

B-331759

January 28, 2020

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

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

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Portable Air Conditioners*

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 Portable Air Conditioners” (RIN: 1904-AD02). We received the rule on January 14, 2020. It was published in the *Federal Register* as a final rule on January 10, 2020. 85 Fed. Reg. 1378. The effective date of the rule is March 10, 2020.

The final rule establishes new energy conservation standards for portable air conditioners (ACs). DOE determined that the energy conservation standards for these products will result in significant conservation of energy and are technologically feasible and economically justified. The standards, which correspond to trial standard level 2, are the minimum allowable combined energy efficiency ratio standards, and are expressed in British thermal units per watt-hour. These standards apply to all single-duct portable ACs and dual-duct portable ACs that are manufactured in, or imported into, the United States starting on January 10, 2025.

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 rule was published on January 10, 2020, but not received by Congress until January 14, 2020. It has a stated effective date of March 10, 2020, but compliance with the new energy standard is not required until January 10, 2025. To the extent that the rule purports to be effective on March 10, 2020, it does not have the required 60-day delay in 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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Daniel Cohen
Assistant General Counsel for Legislation,
Regulation and Energy Efficiency
Department of Energy

ENCLOSURE

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 PORTABLE AIR CONDITIONERS”
(RIN: 1904-AD02)

(i) Cost-benefit analysis

The Department of Energy (DOE) expressed the benefits and costs of the standards adopted by this final rule in terms of annualized values, among other ways. DOE calculated the annualized net benefit as (1) the annualized national economic value (expressed in 2015 dollars) of the benefits from operating products that meet the adopted standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs), and (2) the annualized monetary value of the benefits of greenhouse gas (GHG) and nitrogen oxide (NO_x) emission reductions.

Using a 7-percent discount rate for benefits and costs other than GHG reductions (for which DOE used average social costs with a 3-percent discount rate) DOE estimated the cost of the adopted standards for portable air conditioners (ACs) to be \$61 million per year in increased equipment costs. DOE estimated the annual benefits to be \$202.7 million in reduced equipment operating costs, \$56.7 million in GHG reductions, and \$2.6 million in reduced NO_x emissions. At this discount rate, DOE found the net benefit would amount to \$201 million per year.

Using a 3-percent discount rate for all benefits and costs, DOE estimated the cost of the adopted standards for portable ACs is \$59 million per year in increased equipment costs, and the estimated annual benefits to be \$240 million in reduced operating costs, \$56.7 million in GHG reductions, and \$3.3 million in reduced NO_x emissions. At this discount rate, DOE found the net benefit amounts to \$241 million per year.

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

DOE certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(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 a federal intergovernmental mandate because it does not require expenditures of \$100 million or more in any one year by the private sector. Potential expenditures identified by DOE include: (1) investment in research and development and in capital expenditures by portable AC 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 portable ACs, 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.*

On June 13, 2016, DOE published a notice of proposed rulemaking and notice of public meeting. 81 Fed. Reg. 38397. On July 20, 2016, DOE held a public meeting to discuss the issues detailed in the proposed rule. DOE received comments on the proposed rule from efficiency advocates, manufacturers, trade associations, utilities, a third-party test laboratory, and a government agency. DOE responded to comments in the final rule.

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

According to DOE, manufacturers will need to certify to DOE that their products comply with the energy conservation standards established in this final rule. In certifying compliance, manufacturers must test their products according to DOE test procedures, 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 portable ACs. 76 Fed. Reg. 12422 (Mar. 7, 2011); 80 Fed. Reg. 5099 (Jan. 30, 2015). 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 Act. This requirement has been approved by OMB under OMB Control Number 1910-1400. DOE estimates that public reporting burden for the certification averages 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

DOE promulgated this rule under the authority of sections 6291–6317 of title 42 and section 2461 note of title 28, United States Code.

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

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in OMB determined that this final rule is a significant regulatory action under the Order. Accordingly, DOE provided to OIRA: (1) the text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (2) an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate.

Executive Order No. 13,132 (Federalism)

DOE determined that this 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.