

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

B-333521

August 31, 2021

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

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Ranking Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Final Determination of Fans and Blowers as Covered Equipment*

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: Final Determination of Fans and Blowers as Covered Equipment” (RIN: 1905-AC55). We received the rule on August 19, 2021. It was published in the *Federal Register* as a “final rule; final determination” on August 19, 2021. 86 Fed. Reg. 46579. The stated effective date of this final rule is September 20, 2021.

According to DOE, this final rule classifies certain fans and blowers as covered equipment under the Energy Policy and Conservation Act, as amended. *See generally* Pub. L. No. 116-260, div. D, title III, 134 Stat. 1182 (Dec. 27, 2020). DOE stated that the final rule also establishes the definition of equipment that are considered fans and blowers.

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 August 19, 2021. The rule has a stated effective date of September 20, 2021. Therefore the final rule does not have the required 60-day delay of 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy
Assistant General Counsel for Legislation,
Regulation & 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: FINAL DETERMINATION
OF FANS AND BLOWERS AS COVERED EQUIPMENT”
(RIN: 1905-AC55)

(i) Cost-benefit analysis

In its submission to us, the Department of Energy (DOE) indicated that a cost and benefit analysis is not applicable to this final rule.

(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, nor is it expected to require expenditures of \$100 million or more (adjusted annually for inflation) in any one year by the private sector.

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

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

On June 28, 2011, DOE published a notice of proposed determination of coverage proposing to determine that fans, blowers, and fume hoods qualify as covered equipment. 76 Fed. Reg. 37678 (*NOPD*). DOE subsequently published a framework document detailing an analytical approach for developing potential energy conservation standards for commercial and industrial fans and blowers should the Secretary classify such equipment as covered equipment. 78 Fed. Reg. 7306 (Feb. 1, 2013) (*Framework Document*). On December 10, 2014, DOE published a notice of data availability that presented a provisional analysis estimating the economic impacts and energy savings from potential energy conservation standards for certain fans and blowers. 79 Fed. Reg. 73246. On April 1, 2015, DOE published a notice of intent to establish a negotiated rulemaking working group under the Appliance Standards and Rulemaking Federal Advisory Committee (*Working Group*) to negotiate proposed definitions, and, as applicable, certain aspects of a proposed test procedure and proposed energy conservation standards for fans and blowers. 80 Fed. Reg. 17359. DOE stated that the Working Group negotiations comprised 16 meetings and three webinars and covered scope, metrics, test procedures, and energy conservation standard levels for fans and blowers. On May 1, 2015, DOE published a second notice of data availability of a revised provisional analysis of the potential economic impacts and energy savings that could result from promulgating an energy conservation standard for commercial and industrial fans and blowers. 80 Fed. Reg. 24841. On

February 14, 2020, DOE published a final rule titled, “Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment (*Process Rule*).” 85 Fed. Reg. 8626. According to DOE, the *Process Rule* updated the procedures, interpretations, and policies that DOE will follow in the consideration and promulgation of new or revised appliance energy conservation standards and test procedures under the Energy Policy and Conservation Act, as amended. See *generally* Pub. L. No. 116-260, div. D, title III, 134 Stat. 1182 (Dec. 27, 2020). DOE also stated that because this coverage determination was already in progress at the time the revised *Process Rule* was published, it is applying those provisions moving forward (*i.e.*, rather than reinitiating the entire rulemaking process). DOE stated further that it has not, to date, proposed test procedures or energy conservation standards for fans and blowers. Lastly, DOE stated that in preparation for this notice, on May 10, 2021, it published a request for information requesting comments on a potential fan or blower definition. 86 Fed. Reg. 24752 (*May 2021 RFI*). DOE stated that it developed the rule after considering comments, data, and information from interested parties that represent a variety of interests. The rule provides a table that lists the interested parties that have provided comments on the *NOPD*, *Framework Document*, and the *May 2021 RFI*. DOE stated further that the comments received specific to the fan and blower definition, fan and blower coverage, and DOE's decision regarding a definition and coverage for fans and blowers are discussed in the rule. Finally, DOE stated that the rule does not reference or respond to comments made by interested parties regarding issues that are outside the scope of the rule (*e.g.*, comments related to potential energy conservation standards and test procedures).

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

In its submission to us, DOE indicated that PRA analysis under this Act was not applicable to this final rule.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to section 2461 note of title 28 and sections 6291–6317 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE determined that this final rule is not significant under the Order. Consequently, according to DOE, the Office of Management and Budget did not review the rule.

Executive Order No. 13132 (Federalism)

DOE determined that this final rule does not preempt state law or have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.