



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-278580

November 21, 1997

The Honorable Frank H. Murkowski
Chairman
The Honorable Dale Bumpers
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Department of Energy: Energy Conservation Program for Consumer Products: Final Rule Regarding Energy Conservation Standards for Room 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 for Consumer Products: Final Rule Regarding Energy Conservation Standards for Room Air Conditioners" (RIN: 1904-AA38). We received the rule on November 6, 1997. It was published in the Federal Register as a final rule on September 24, 1997. 62 Fed. Reg. 50122.

The Department of Energy is promulgating this rule to amend existing energy conservation standards for room air conditioners. It has determined that the revised standards will conserve a significant amount of energy, are technologically feasible, and are economically justified. The Department predicts that the revised standards will save 0.64 quad of energy through 2030, which it estimates is likely to result in a cumulative reduction of emissions of approximately 95,000 tons of nitrogen dioxide and 54 million tons of carbon dioxide.

Enclosed is our assessment of the Department 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 indicates that the Department complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Department of Energy is Victor Rezendes, Director for Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Romulo L. Diaz, Jr.
Director, Office of Rulemaking Coordination
Department of Energy

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF ENERGY
ENTITLED
"ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS:
FINAL RULE REGARDING ENERGY CONSERVATION STANDARDS
FOR ROOM AIR CONDITIONERS"
(RIN: 1904-AA38)

(i) Cost-benefit analysis

DOE provided us with a copy of its Technical Support Document (TSD) that was prepared in conjunction with this final rule. The TSD outlines the general methodology used to analyze several alternative efficiency levels for the room air conditioner market in the United States. It describes the methodologies employed for (1) conducting engineering analyses and determining life-cycle costs, (2) energy savings potential, (3) energy and economic impacts for residential buildings, (4) impacts on manufacturer profitability, (5) environmental impacts, and (6) utility impacts for several energy efficiency levels.

According to DOE, the TSD is an extensively revised version of the TSD published in November 1993, upon which the March 1994 Notice of Proposed Rulemaking was based. DOE states that the revised TSD relies heavily on data provided with comments on the Notice of Proposed Rulemaking; much of that data came from industry sources.

DOE projects that the standards set forth in the final rule will save approximately 0.64 quad of energy through 2030, which it estimates is likely to result in a cumulative reduction of emissions of approximately 95,000 tons of nitrogen dioxide and 54 million tons of carbon dioxide. That savings is a reduction of the projected savings estimated in the Notice of Proposed Rulemaking. DOE concluded that the proposed standards were not economically justified and that the standards set forth in the final rule are significantly less costly than those proposed earlier.

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

Under section 6105(b) of the act, an agency is exempted from the preparation of regulatory flexibility analyses concerning the impact of the rule on small entities, otherwise required by the act, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities. In the

preambles to both the proposed rule and this final rule, DOE certified that this rule will not have such an effect. Therefore, no analyses were prepared.

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

Section 202 of the act requires a federal agency to publish estimates of the costs, benefits, and other effects on the economy when a proposed regulatory action may result in the expenditure by the private sector of \$100 million or more. The TSD discussed above addresses those requirements.

Section 205 of the Unfunded Mandates Reform Act also requires a federal agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. In the "Detailed Analysis of Efficiency Levels" section of the TSD, DOE discusses the alternatives considered and describes how this final rule establishes for room air conditioners energy conservation standards that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified.

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

National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.

DOE prepared an Environmental Assessment that was published within the TSD for the proposed rule in November 1993. DOE found that the environmental effects were not found to be significant and published a Finding of No Significant Impact (59 Fed. Reg. 15868, April 5, 1994).

In preparing the analysis for the final rule, DOE evaluated several alternatives suggested in comments on the proposed rule. As a result, the savings estimates and environmental effects changed somewhat from those in the final rule, but still fall within ranges of environmental impacts found not to be significant.

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

This final rule was promulgated under the notice and comment procedures of 5 U.S.C. §§ 553. On March 4, 1994, DOE published a Notice of Proposed Rulemaking concerning eight products, including room air conditioners, and invited comments on the proposed rule. 59 Fed. Reg. 10464. Over 8,000 comments were received; 12 of which dealt with room air conditioners. DOE concluded that these comments did raise a number of significant issues, and in 1995 revised its analysis of the proposed standards to account for the comments and data received during the comment period. The preamble to the final rule discusses the comments received and the changes DOE made as a result of the comments.

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

According to DOE, no new information or recordkeeping requirements are imposed by this rulemaking. Therefore, no Office of Management and Budget (OMB) clearance is required under the act.

Statutory authorization for the rule

Part B of Title III of the Energy Policy and Conservation Act, as amended (42 U.S.C. §§ 6291 et seq., particularly 42 U.S.C. § 6292).

Executive Order 12866

This final rule has been determined to be an "economically significant regulatory action" under Executive Order 12866 and was reviewed by the Office of Management and Budget. Pursuant to this order, DOE prepared a draft regulatory analysis that was reviewed by OMB. The analysis evaluated six regulatory alternatives and several non-regulatory alternatives and concluded that none of the alternatives would achieve the energy savings expected from the standards set in the final rule.

Executive Order 12988

DOE reviewed this rule under the standards set forth in section 3 of Executive Order 12988, "Civil Justice Reform," and determined that the final rule meets the relevant standards.

Executive Order 12630

DOE reviewed this rule under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," and determined that it does not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

Executive Order 12612

DOE reviewed this rule under Executive Order 12612, "Federalism," and determined that this rule does not require the preparation of a federalism assessment because it does not have a substantial direct effect on state governments.

DOE did not identify any other statutes or executive orders imposing requirements on this rulemaking.