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October 31, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Energy Conservation Program for Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards*

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 Commercial and Industrial Equipment: Packaged Terminal Air Conditioner and Packaged Terminal Heat Pump Energy Conservation Standards” (RIN: 1904-AB44). We received the rule on October 20, 2008. It was published in the *Federal Register* as a final rule on October 7, 2008. 73 Fed. Reg. 58,772.

The final rule amends the energy conservation standards for commercial standard size packaged terminal air conditioners (PTAC) and packaged terminal heat pumps (PTHP) to efficiency levels more stringent than those in American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)/ Illuminating Engineering Society of North America (IESNA) Standard 90.1-1999. The final rule adopts the ASHRAE Standard 90.1-1999 for non-standard size PTACs and PTHPs.

The final rule has an announced effective date of November 6, 2008. The Congressional Review Act 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). The rule was published in the *Federal Register* on October 7, 2008, and was not received by this office until

October 20, 2008. Therefore, the final rule does not have the required 60-day delay in its effective date. The standards established in the final rule will not be applicable for non-standard size PTACs and PTHPs until October 7, 2010, or for standard size PTACs and PTHPs until October 8, 2012.

Enclosed is our assessment of the 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. Our review indicates that, with the exception of the delay in the rule's effective date, 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Michael W. Bowers
Attorney, Office of Assistant General
Counsel for Legislation and Regulatory Law
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 FOR COMMERCIAL
AND INDUSTRIAL EQUIPMENT: PACKAGED TERMINAL
AIR CONDITIONER AND PACKAGED TERMINAL
HEAT PUMP ENERGY CONSERVATION STANDARDS"
(RIN: 1904-AB44)

(i) Cost-benefit analysis

DOE concluded that the benefits of this rule, including energy savings, commercial customer average life-cycle costs (LCC) savings, positive national net present value (NPV), and emission reductions, outweigh the costs, such as loss of manufacturer industry net present value and commercial customer LCC increases for some users of packaged terminal air conditioners (PTAC) and packaged terminal heat pumps (PTHP). On an annualized basis over the forecast period 2012 through 2042, using a 7-percent discount rate, DOE estimates the costs to be \$4.7 million per year in increased equipment and installation costs while the annualized benefits are \$5.7 million per year in reduced equipment operating costs. Using a 3-percent discount rate, the costs are \$4.1 million per year and the benefits are \$6.5 million per year.

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

DOE performed a final regulatory flexibility analysis under the Act. DOE identified six small manufacturers in the PTAC and PTHP industry, five of which make customized and non-standard sized equipment. DOE determined that given the focus and scale of these small manufacturers any appliance rulemaking would disproportionately affect these manufacturers. In order to minimize the economic impact on small, non-standard size PTAC and PTHP manufacturers, DOE concluded that the efficiency levels in ASHRAE Standard 90.1-1999 are the highest levels that could be justified.

(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 contains neither an intergovernmental mandate nor a mandate that may result in expenditure of \$100 million or more in any year.

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

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

The proposed rule was published in the *Federal Register* on April 7, 2008. 73 Fed. Reg. 18,858. DOE held a public meeting on May 1, 2008, in Washington, D.C., to accept oral comments on and solicit information relevant to the proposed rule. DOE received both written and oral comments and responded to those comments in this final rule. 73 Fed. Reg. 58,772.

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

DOE determined that this final rule would impose no new information and recordkeeping requirements under the Paperwork Reduction Act.

Statutory authorization for the rule

This final rule is issued under the authority of Part A-1 of Title III of the Energy Policy and Conservation Act, codified at 42 U.S.C. §§ 6311 - 6317.

Executive Order No. 12,866

DOE states that it determined this final rule was a significant regulatory action under section 3(f)(1) of Executive Order 12,866, and based on this determination, DOE prepared a cost benefit analysis and submitted the analysis to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) for review. In its review of this final rule, OIRA concluded this rule was not significant under the Executive Order (OIRA's review can be found at <http://www.reginfo.gov/public/do/eoDetails?rrid=116380>).

Executive Order No. 13,132 (Federalism)

DOE determined that the final rule 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.