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B-336150

April 23, 2024

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

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

Subject: *Department of Energy: Energy Conservation Standards for Residential Clothes Washers*

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 Residential Clothes Washers” (RIN: 1904-AF58). We received the rule on March 15, 2024. It was published in the *Federal Register* as a direct final rule on March 15, 2024. 89 Fed. Reg. 19026. The effective date is July 15, 2024.

The direct final rule adopts amended energy conservation standards for residential clothes washers (RCWs) pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975), as amended. DOE states that the amended energy conservation standards will result in significant conservation of energy and that the standards are technologically feasible and economically justified.

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.

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:
ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL CLOTHES WASHERS”
(RIN: 1904-AF58)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted a cost-benefit analysis of the direct final rule. At a three-percent discount rate in millions of 2022 dollars, DOE estimated that the rule would produce a net annual benefit of between \$537.7 and \$691.4. At a seven-percent discount rate in millions of 2022 dollars, DOE estimated that the direct final rule would produce a net annual benefit of between \$371.3 and \$502.5.

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

DOE stated that it is not obligated to prepare a regulatory flexibility analysis for the direct final rule because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act, Pub. L. No. 79-404, 60 Stat. 23 (Jun. 11, 1946). DOE further stated that an agreement submitted to DOE jointly by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility, meets the necessary requirements under the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975), as amended, to issue this direct final rule for energy conservation standards for residential clothes washers (RCWs). Finally, DOE stated that its Notice of Proposed Rulemaking (NPR) published simultaneously with the direct final rule contains an initial regulatory flexibility analysis.

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

DOE stated that it has concluded the direct final rule may require expenditures of \$100 million or more in any one year by the private sector. DOE indicated that such expenditures may include (1) investment in research and development and in capital expenditures by RCW manufacturers in the years between the direct final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency RCWs, starting at the compliance date for the applicable standard.

DOE stated that the supplementary information section of the direct final rule and the technical support document submitted with the direct final rule respond to the requirements of section 202(b) of the Act.

DOE further indicated that it identified and considered a reasonable number of regulatory alternatives as required under section 205 of the Act, and that a full consideration of those alternatives is presented in chapter 17 of the technical support document accompanying the direct final rule.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

DOE did not discuss the Act in the rule or in its submission to us.

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

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

Simultaneous with its publication of the direct final rule, DOE published an NOPR that contains identical standards to those adopted in the direct final rule. 88 Fed. Reg. 18836 (Mar. 15, 2024). DOE indicated that it is providing a 110-day public comment period on the direct final rule, and that if it determines that any comments provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. § 6295 or any other applicable law, DOE will publish the reasons for withdrawal and continue the rulemaking under the NOPR.

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

DOE stated that the direct final rule requires revised certification data for RCWs to demonstrate compliance with the direct final rule’s amended standards. However, DOE stated that it is not amending certification or reporting requirements for RCWs in this direct final rule. Instead, DOE stated that it may consider proposals to amend the certification requirements and reporting for RCWs under a separate rulemaking regarding appliance and equipment certification. DOE stated that it will address any changes to the relevant information collection requirements, currently assigned to OMB Control Number 1910-1400, in any such separate rulemaking.

Statutory authorization for the rule

DOE promulgated the direct final rule pursuant to section 2461 note of title 28 and sections 6291 through 6309 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that OMB's Office of Information and Regulatory Affairs (OIRA) determined that this direct final rule is a significant regulatory action within the scope of the Order. Accordingly, DOE stated that it conducted a regulatory impact analysis as part of the direct final rule.

Executive Order No. 13132 (Federalism)

DOE stated that the direct final rule does not have significant federalism implications. DOE further stated that the direct 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 governments. Additionally, DOE stated that EPCA governs and expressly prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this direct final rule.