



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

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May 22, 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 Program: Energy Conservation Standards for Miscellaneous Refrigeration Products*

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 Miscellaneous Refrigeration Products" (RIN: 1904-AF62). We received the rule on May 7, 2024. It was published in the *Federal Register* as a direct final rule on May 7, 2024. 89 Fed. Reg. 38762. The effective date of the rule is September 4, 2024.

This final rule adopts amended energy conservation standards for miscellaneous refrigeration products pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975). DOE has determined that amended energy conservation standards for these products would result in significant conservation of energy and 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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy
Assistant General Counsel
Legislation, Regulation, and 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 MISCELLANEOUS REFRIGERATION PRODUCTS”
(RIN: 1904-AF62)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this direct final rule. DOE’s analysis included a discussion of the rule’s benefits and costs to consumers, the impact of the rule on manufacturers, and the national benefits and costs of the rule.

Using a 7 percent discount rate for consumer benefits and costs and health benefits from reduced emissions of specified types, and a 3 percent discount rate case for climate benefits from reduced emissions of specified types, DOE estimated that the cost of the final rule would be \$72.7 million per year in increased equipment costs, while the estimated annual benefits would be \$90.6 million in reduced equipment operating costs, \$18.3 million in climate benefits, and \$25.6 million in health benefits, yielding a net benefit of \$61.7 million per year.

Using a 3 percent discount rate for all benefits and costs, DOE estimated that the cost of the rule would be \$70.8 million per year in increased equipment costs, while the estimated annual benefits would be \$115 million in reduced operating costs, \$18.3 million in climate benefits, and \$35.6 million in health benefits, yielding a net benefit of \$98.0 million per year.

(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 this final rule because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act, 5 U.S.C. §§ 601(2), 603(a). DOE further stated that it has determined that a Joint Agreement with groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility, titled “Energy Efficiency Agreement of 2023,” meets the necessary requirements under the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975), to issue the rule under the procedures in 42 U.S.C. § 6295(p)(4).

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

DOE concluded that this final rule may require expenditures of \$100 million or more, adjusted annually for inflation, in any one year by the private sector in the form of: (1) investment in research and development and in capital expenditures by miscellaneous refrigeration product (MREF) 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 MREFs starting at the compliance date for the applicable standard.

DOE stated that it has responded to the content requirements of the Act through the supplementary information section of the direct final rule and through the technical support document accompanying this 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.

This final rule does not discuss the Act. In its submission to us, DOE stated that it did not prepare a statement regarding compliance with the Act.

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

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

Simultaneous with this direct final rule's publication, DOE promulgated a notice of proposed rulemaking (NPR) that it stated contains identical standards to those adopted in the rule. 89 Fed. Reg. 37987 (May 7, 2024). DOE further stated that it is providing a 110-day public comment period on the rule, and that if it determines that any comments received may provide a reasonable basis for withdrawal of the rule, it will publish the reasons for withdrawal and continue its rulemaking under the NPR.

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

DOE stated that it has already established collection-of-information requirements associated with certification and recordkeeping requirements attributable to MREFs, and that these information collection requirements have been approved previously by OMB under Control Number 1910-1400. DOE further stated that the public reporting burden associated with these information collection requirements is estimated to average 35 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.

In its submission to us, DOE further clarified that the rule contains no new collection-of-information requirements.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to section 2461 note of title 28, as well as 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) has determined that this rule is a significant regulatory action under the Order. Accordingly, DOE stated that it has provided OIRA with the assessment required under the Order.

Executive Order No. 13132 (Federalism)

DOE stated that this 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. Therefore, DOE stated that no further action was required under the Order.