



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

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February 5, 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 Refrigerators, Refrigerator-Freezers, and Freezers*

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 Refrigerators, Refrigerator-Freezers, and Freezers” (RIN: 1904-AF56). We received the rule on January 19, 2024. It was published in the *Federal Register* as a direct final rule on January 17, 2024. 89 Fed. Reg. 3026. The effective date is March 16, 2024. DOE clarified that if adverse comments are received by May 6, 2024, and DOE determines that such comments may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. § 6295(o), a timely withdrawal of this rule will be published in the *Federal Register*. DOE explained that if no such adverse comments are received, compliance with the amended standards established for refrigerators, refrigerator-freezers, and freezers in this rule is required on and after January 31, 2029, for certain product classes listed in the rule, and January 31, 2030, for other specific product classes listed in the rule.

According to DOE, the Energy Policy and Conservation Act, as amended,¹ prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including refrigerators, refrigerator-freezers, and freezers. DOE stated that this direct final rule adopts amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers. DOE explained that it determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified.

¹ In the rule, DOE noted that all references to the Energy Policy and Conservation Act (EPCA) in the rule refer to the statute as amended through the Energy Act of 2020, Pub. L. No. 116-260 (Dec. 27, 2020), which reflects the last statutory amendments that impact Parts A and A-1 of EPCA.

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 direct final rule was published in the *Federal Register* on January 17, 2024. 89 Fed. Reg. 3026. The *Congressional Record* shows that the rule was received by both the Senate and the House of Representatives on January 22, 2024. 170 Cong. Rec. S249 (daily ed. Jan. 24, 2024); 170 Cong. Rec. H270 (daily ed. Jan. 29, 2024). The rule has a stated effective date of March 16, 2024. Therefore, the rule does not have the required 60-day delay in its 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 cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy
Assistant General Counsel
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 REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS”
(RIN: 1904-AF56)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted a cost-benefit analysis of this direct final rule. Using a 7-percent discount rate for consumer benefits and costs and nitrogen oxides and sulfur dioxide reduction benefits, and a 3-percent discount rate case for greenhouse gases social costs, DOE estimated the cost of the standards for refrigerators, refrigerator-freezers, and freezers to be \$590.5 million per year in increased product costs, and estimated the annual monetized benefits as \$1.7 billion in reduced product operating costs, \$303.8 million in climate benefits, and \$410.6 million in health benefits. According to DOE, the net monetized benefit amounts to \$1.8 billion per year.

DOE clarified that the significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. Accordingly, DOE stated that it evaluates the significance of energy savings on a case-by-case basis. Additionally, DOE stated that the standards from the rule are projected to result in estimated national energy savings of 5.6 quads (full-fuel cycle), the equivalent of the primary annual energy use of 37 million homes, and are projected to reduce carbon dioxide emissions by 100.8 Mt.

(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 direct final rule because there is not a requirement to publish a general notice of proposed rulemaking for the rule under the Administrative Procedure Act (APA), 5 U.S.C. §§ 601(2), 603(a). DOE determined that the letter that proposed the rule’s adopted standard levels, entitled “Energy Efficiency Agreement of 2023” (the Joint Agreement), meets the necessary requirements under the Energy Policy and Conservation Act, as amended (EPCA)² to issue the rule for energy conservation standards for refrigerators, refrigerator-freezers, and freezers under the procedures in 42 U.S.C. § 6295(p)(4). DOE noted that the notice of proposed rulemaking (NOPR) for energy conservation standards for refrigerators, refrigerator-freezers, and freezers published elsewhere in the *Federal Register* contains an initial regulatory flexibility analysis. 89 Fed. Reg. 2886 (Jan. 17, 2024).

² In the rule, DOE noted that all references to the Energy Policy and Conservation Act (EPCA) in the rule refer to the statute as amended through the Energy Act of 2020, Pub. L. No. 116-260 (Dec. 27, 2020), which reflects the last statutory amendments that impact Parts A and A-1 of EPCA.

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

(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 Administrative Pay-As-You-Go Act of 2023 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.*

DOE stated that on September 25, 2023, it received the Joint Agreement, which recommended standards for refrigerators, refrigerator-freezers, and freezers. DOE noted that it had been conducting a rulemaking to consider amending the standards for refrigerators, refrigerator-freezers, and freezers when the Joint Agreement was submitted. As part of DOE’s original rulemaking process, DOE stated that on February 27, 2023, it had published a NOPR and announced a public webinar seeking comment on its proposed amended standard to inform its decision consistent with its obligations under EPCA and APA. 88 Fed. Reg. 12452. DOE stated that it also held a public webinar on April 11, 2023, to discuss and receive comments on the NOPR.

Although DOE is adopting the Joint Agreement as a direct final rule and no longer proceeding with its own rulemaking, DOE expressed that it did consider relevant comments, data, and information obtained during that rulemaking process in determining whether the recommended

standards from the Joint Agreement are in accordance with 42 U.S.C. § 6295(o). DOE stated that any discussion of comments, data, or information in the rule that were obtained during its own prior rulemaking will include a parenthetical reference that provides the location of the item in the public record.

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

DOE determined that this direct final rule contains information collection requirements under the Act. According to DOE, manufacturers of consumer refrigerators, refrigerator-freezers, and freezers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, DOE explained that manufacturers must test their products according to the DOE test procedures for consumer refrigerators, refrigerator-freezers, and freezers, including any amendments adopted for those test procedures. DOE noted that it has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including consumer refrigerators, refrigerator-freezers, and freezers. DOE stated that the collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Act, and that this requirement has been approved by OMB under OMB Control Number 1910-1400. DOE estimated the public reporting burden for the certification 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.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

According to DOE, the Office of Information and Regulatory Affairs (OIRA) determined that this direct final rule constitutes a “significant regulatory action” within the meaning of the Order. Pursuant to the Order, DOE stated that it provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the rule, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

Executive Order No. 13132 (Federalism)

DOE stated that it has examined this direct final rule and has determined that it 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. In response to assertions that a proposed version of the rule would have federalism impacts under the Order, DOE reiterated its view that the rule does not have significant federalism implications. DOE clarified that EPCA governs and expressly prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of the rule. According to DOE, no further action is required under the Order since states can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA.