



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

B-336407

June 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 Air-Cooled Commercial Package Air Conditioners and Heat Pumps*

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 Air-Cooled Commercial Package Air Conditioners and Heat Pumps” (RIN: 1904-AF34). We received the rule on May 22, 2024. It was published in the *Federal Register* as a direct final rule on May 20, 2024. 89 Fed. Reg. 44052. The effective date of the rule is September 17, 2024.

According to DOE, this direct final rule prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including air-cooled commercial package air conditioners and heat pumps with a rated cooling capacity greater than or equal to 65,000 British thermal units per hour.

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.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy
Assistant General Counsel for 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 AIR-COOLED COMMERCIAL PACKAGE AIR CONDITIONERS AND HEAT PUMPS”
(RIN: 1904-AF34)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this direct final rule. This analysis included discussion of the benefits and costs to consumers, impact on manufacturers, and national benefits and costs. DOE estimated that the estimated cost of the standards is \$481.3 million per year in increased equipment costs, while the estimated annual benefits are \$944.7 million in reduced equipment operating costs, \$279.2 million in climate benefits, and \$317.2 million in health benefits. The net benefit amounts to \$1.1 billion per year, according to DOE.

(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 under the Administrative Procedure Act. See 5 U.S.C. §§ 601(2), 603(a).

(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 direct final rule may require expenditures of \$100 million or more in any one year by the private sector. In its submission to us, DOE indicated that it prepared a written statement under section 202 of the Act.

(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 this direct final rule. In its submission to us, DOE stated the Act does not apply because the rule does not increase direct spending.

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

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

On May 12, 2020, DOE published a request for information. 85 Fed. Reg. 27941. On May 25, 2022, DOE published another request for information. 87 Fed. Reg. 31743. In response, DOE received a number of written comments from stakeholders including manufacturers, trade associations, and utilities. DOE stated it considered these comments in preparation of this direct final rule. Additionally, on July 29, 2022, DOE published a notice of intent to establish a working group. 87 Fed. Reg. 45703. This working group met five times to discuss energy conservation standards on February 22–23, March 21–22, April 12–13, April 26–27, and May 1, 2023. According to DOE, this working group reached consensus and outlined its recommendations on May 1, 2023. DOE addressed these recommendations and responded to comments in this direct final rule.

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

DOE determined that OMB Control Number 1910-1400, “Compliance Statement Energy/Water Conservation Standards for Appliances,” is currently valid and assigned to the certification reporting requirements applicable to covered products and equipment, including air-cooled commercial unitary air conditioners with a rated cooling capacity greater than or equal to 65,000 British thermal units per hour (ACUACs) and air-cooled commercial unitary heat pumps with a rated cooling capacity greater than or equal to 65,000 British thermal units per hour (ACUHPs). DOE also concluded that the amended energy conservation standards for ACUACs and ACUHPs will not impose additional costs for manufacturers related to reporting and certification. DOE explained it may consider proposals to establish associated certification requirements and reporting for ACUACs and ACUHPs under a separate, future rulemaking if necessary, at which time it will address changes to OMB Control Number 1910-1400.

Statutory authorization for the rule

DOE promulgated this direct final rule pursuant to sections 6291 through 6317 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this direct final rule constitutes a significant regulatory action under the Order. Accordingly, DOE stated that it had provided the Office of Information and Regulatory Affairs with an assessment, including the underlying analysis, of benefits and costs anticipated from the final regulatory action, 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 determined that this direct final rule does not have federalism implications and will not have substantial direct effects 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.