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October 20, 2023

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 Dedicated Purpose Pool Pump Motors*

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 Dedicated Purpose Pool Pump Motors” (RIN: 1904-AF27). We received the rule on October 10, 2023. It was published in the *Federal Register* as a final rule on September 28, 2023. 88 Fed. Reg. 66966. The effective date is November 27, 2023.

The final rule adopts amended energy conservation standards for dedicated purpose pool pump motors, according to DOE. DOE stated that it determined that the new energy conservation standards for these products would result in significant conservation of energy and are technologically feasible and economically justified.

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 final rule was published in the *Federal Register* on September 28, 2023. 88 Fed. Reg. 66966. The House of Representatives received the rule on October 11, 2023. 169 Cong. Rec. H5012 (daily ed. Oct. 13, 2023). The *Congressional Record* does not yet reflect the date that the Senate received the rule. The rule has a stated effective date of November 27, 2023. Therefore, based on the date of receipt by the House, 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 black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

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 DEDICATED PURPOSE POOL PUMP MOTORS”
(RIN: 1904-AF27)

(i) Cost-benefit analysis

The Department of Energy (DOE) analyzed the benefits and costs of this final rule. Specifically, DOE stated that the standards adopted in the rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified and would result in the significant conservation of energy. According to DOE, equipment is able to achieve these standard levels using technology options currently available in the dedicated purpose pool pump (DPPP) motor market. As for economic justification, DOE stated that the benefits of the standards in the rule exceed the burdens of the standards. Using a 7-percent discount rate for consumer benefits and costs and NO_x and SO₂ reduction benefits, and a 3-percent discount rate case for greenhouse gas social costs, the estimated monetized cost of the standards for DPPP motors is \$221 million per year in increased equipment costs, while the estimated annual monetized benefits are \$684 million in reduced equipment operating costs, \$103 million in monetized climate benefits, and \$173 million in monetized ambient air pollutant health benefits. The monetized net benefit amounts to \$739 million per year, according to DOE. DOE further stated that the rule is projected to result in estimated national energy savings of 1.56 quads full-fuel-cycle, the equivalent of the primary annual energy use of 16.8 million homes.

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

DOE prepared a final regulatory flexibility analysis for this final rule. In it, DOE discusses (1) the need for, objectives of, and legal basis for the rule; (2) significant comments in response to the Initial Regulatory Flexibility Analysis; (3) comments filed by the Chief Counsel for Advocacy; (4) description on estimated number of small entities regulated; (5) description and estimate of compliance requirements including differences in cost, if any, for different groups of small entities; and (6) significant alternatives to the rule.

(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 this final rule may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures, according to DOE, may include (1) investment in research and development and in capital expenditures by DPPP motors manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency DPPP motors, starting at the compliance date for the applicable standard. Finally, DOE stated that the rule establishes new energy conservation standards for DPPP motors that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified.

(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 this final rule.

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

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

On June 21, 2022, DOE published a notice of proposed rulemaking. 87 Fed. Reg. 37122. On July 26, 2022, DOE presented the proposed standards and accompanying analysis in a public meeting. DOE received comments in response to the notice of proposed rulemaking, including from efficiency organizations, state agencies, a legal institute, pool pump manufacturers, utilities, trade associations, and a motor manufacturer. DOE addressed comments in the final rule.

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

DOE stated that the certification and recordkeeping requirements have been approved by OMB under OMB Control Number 1910-1400. According to DOE, the public reporting burden for the certification is estimated to average 35 hours per response. DOE further stated it is not adopting certification or reporting requirements for DPPP motors in this final rule but will do so under a separate rulemaking and will address changes to OMB Control Number 1910-1400 at that time, as necessary.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to sections 6291–6317 of title 42, and section 2461 note of title 28, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that the Office of Information and Regulatory Affairs (OIRA) determined that this final rule is a significant regulatory action within the meaning of the Order, as amended.

Executive Order No. 13132 (Federalism)

DOE stated that this final rule meets the relevant standards of the Order. According to DOE, the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975) (EPCA), governs and prescribes express federal preemption of state regulations as to energy conservation for the equipment that are the subject of this rule. As such, according to DOE, any state regulation regarding the energy efficiency or use of DPPP motors will be preempted. DOE further stated that states can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA.