



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

B-336031

March 8, 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 Consumer Conventional Cooking 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 Standards for Consumer Conventional Cooking Products” (RIN: 1904-AF57). We received the rule on February 16, 2024. It was published in the *Federal Register* as a direct final rule on February 14, 2024. 89 Fed. Reg. 11434. The effective date is June 13, 2024.

The direct final rule adopts new and amended energy conservation standards for consumer conventional cooking products under the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6297, 89 Stat. 871 (Dec. 22, 1975), as amended. DOE stated that the new and amended energy conservation standards for these products would result in significant conservation of energy, and that they 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.

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 CONSUMER CONVENTIONAL COOKING PRODUCTS”
(RIN: 1904-AF57)

(i) Cost-benefit analysis

The Department of Energy (DOE) prepared an economic analysis of the final rule. DOE’s analysis included a discussion of the costs and benefits of the final rule, a discussion of the costs and benefits of potentially effective and reasonably feasible alternatives to the final rule, and an explanation of why the final rule is preferable to the identified potential alternatives.

(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 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. §§ 551 *et seq.*

(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 the final rule does not contain a federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by the private sector. As a result, DOE stated that the analytical requirements of the Act do not apply.

(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.

In its submission to us, DOE did not discuss the Act.

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

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

On February 14, 2024, DOE published a notice a proposed rulemaking (NPR) that DOE stated contains identical standards to those adopted in the final rule. 89 Fed. Reg. 11548 (Feb. 14, 2024). DOE also stated that it is providing a 110-day public comment period on the final rule and that, if it determines that any comments provide a reasonable basis for withdrawal of the final rule, it will publish the reasons for withdrawal and continue the rulemaking under the NPR.

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

DOE stated that the final rule does not amend or create new certification or reporting requirements for conventional cooking products. Instead, DOE stated that it may consider proposals to establish certification requirements and reporting for consumer conventional cooking products under a separate rulemaking. DOE stated that it will address changes to existing OMB Control Number 1910-1400 as part of that separate rulemaking, as necessary.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that the OMB's Office of Information and Regulatory Affairs (OIRA) has determined that the final rule is a significant regulatory action within the scope of the Order. Accordingly, DOE stated that it provided OIRA with an assessment of the benefits and costs of the final 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 final rule, and an explanation of why the final rule is preferable to the identified potential alternatives.

Executive Order No. 13132 (Federalism)

DOE stated that it has determined that the final rule will 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. DOE further stated that the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6297, 89 Stat. 871 (Dec. 22, 1975), governs and prescribes federal preemption of state regulations as to energy conservation for the products that are the subject of this final rule. Therefore, DOE stated that no further action is required under the Order.