



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

B-336286

May 10, 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 Dishwashers*

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 Dishwashers" (RIN: 1904-AF60). We received the rule on April 25, 2024. It was published in the *Federal Register* as a direct final rule on April 24, 2024. 89 Fed. Reg. 31398. The effective date of the rule is August 22, 2024.

According to DOE, this direct final rule adopts amended energy conservation standards for dishwashers. DOE explained that it has determined that these standards would result in significant energy conservation 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 for 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 DISHWASHERS”
(RIN: 1904-AF60)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this direct final rule. DOE estimated that, at a 3-percent discount rate in 2022 dollars, the adopted energy conservation standards would result in total benefits of \$4.64 billion and consumer incremental product costs of \$0.26 billion. DOE also estimated that, at a 7-percent discount rate in 2022 dollars, the standards would result in total benefits of \$2.29 billion and consumer incremental product costs of \$0.15 billion. Additionally, industry will incur total conversion costs of \$126.9 million in order to bring products into compliance with amended standards, 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). DOE also stated it has determined that the “Joint Agreement”—a letter jointly submitted to DOE by groups representing manufacturers, energy and environmental advocates, consumer groups, and a utility—meets the necessary requirements under the Energy Policy and Conservation Act, 42 U.S.C. §§ 6201–6422, to issue the rule for energy conservation standards for dishwashers under the procedures in 42 U.S.C. § 6295(p)(4). Moreover, DOE noted that it simultaneously published a notice of proposed rulemaking for energy conservation standards for dishwashers, which contains a regulatory flexibility analysis, in the same *Federal Register* issue as the rule. 89 Fed. Reg. 31096.

(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 did not prepare 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 January 24, 2022, DOE published a notification of a webinar and availability of a preliminary technical support document. 87 Fed. Reg. 3450. On May 19, 2023, DOE published a proposed rule and announced a public meeting seeking comment. 88 Fed. Reg. 32514. On June 8, 2023, DOE held a public meeting. DOE explained that it is adopting the Joint Agreement as a direct final rule and is no longer proceeding with its own rulemaking. However, DOE stated that it did consider relevant comments, data, and information obtained during the rulemaking process in determining whether the recommended standards from the Joint Agreement meet the criteria for prescribing new or amended standards. DOE explained that in this direct final rule it included parenthetical references to the public record where it discussed any comments, data, and information obtained during DOE's own prior rulemaking.

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

DOE determined that this direct final rule contains no information collection requirements under the Act. DOE also explained that it has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including dishwashers. According to DOE, the collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB, which approved this requirement under OMB Control Number 1910-1400. DOE estimated that the public reporting burden for this certification averages 35 hours per response.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

OMB has determined that this direct final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

DOE determined that this direct final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Order.