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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 Circulator 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 Circulator Pumps” (RIN: 1904-AD61). We received the rule on May 22, 2024. It was published in the *Federal Register* as a final rule on May 20, 2024. 89 Fed. Reg. 44464. The effective date of the rule is August 5, 2024.

According to DOE, the rule prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including circulator pumps, and adopts new energy conservation standards for circulator pumps.

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 CIRCULATOR PUMPS”
(RIN: 1904-AD61)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this final rule. This analysis discussed the benefits and costs to consumers, impact on manufacturers, and national benefits and costs. DOE concluded the estimated cost of the standards for circulator pumps is \$113.9 million per year in increased equipment costs, while the estimated annual benefits are \$207.5 million in reduced equipment operating costs, \$32.7 million in climate benefits, and \$50.7 million in health benefits, with the net benefit amounting to \$177.0 million per year.

(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. The analysis included: (1) a statement of the need for and objectives of the rule; (2) significant issues raised by public comments in response to the initial regulatory flexibility analysis; (3) a description and estimated number of small entities affected; and (4) a description of reporting, recordkeeping, and other compliance requirements.

(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 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 circulator pumps manufacturers in the years between the final rule and the May 22, 2028, compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency circulator pumps, 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.

This final rule does not discuss the Act. In its submission to us, DOE stated the Act does not apply to the rule because it 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 December 6, 2022, DOE published a proposed rule. 87 Fed. Reg. 74850. DOE received approximately 10 comments from individuals, a trade association, a manufacturer, a state agency, various efficiency advocacy organizations, and various utilities. On January 19, 2023, DOE held a public meeting. DOE stated it developed this final rule after considering oral and written comments, data, and information from interested parties that represent a variety of interests. DOE responded to comments in the rule.

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

DOE determined that this final rule contains information collection requirements under the Act. DOE stated the collection-of-information requirement for the certification and recordkeeping that applies to manufacturers has 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, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. DOE further stated that certification data will be required for circulator pumps, but DOE is not adopting certification or reporting requirements for circulator pumps in this final rule.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this 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 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.