



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

B-335709

November 13, 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 Commercial Water Heating Equipment*

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 Commercial Water Heating Equipment” (RIN: 1904-AD34). We received the rule on October 30, 2023. It was published in the *Federal Register* as a final rule on October 6, 2023. 88 Fed. Reg. 69686. The stated effective date is December 5, 2023.

DOE states that the final rule adopts amended energy conservation standards for Commercial Water Heating Equipment pursuant to the Energy Policy and Conservation Act, Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975), as amended. According to DOE, the amended standards will result in significant energy savings as compared with current standards.

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). The *Congressional Record* reflects that the House of Representatives received the rule on October 20, 2023, and the Senate received the rule on October 23, 2023. 169 Cong. Rec. H5179 (daily ed. Oct. 30, 2023); 169 Cong. Rec. S5180 (daily ed. Oct. 25, 2023). The rule has a stated effective date of December 5, 2023. Therefore, the final 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 COMMERCIAL WATER HEATING EQUIPMENT”
(RIN: 1904-AD34)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this final rule. DOE’s analysis included a discussion of the benefits and costs to consumers, a discussion of the impact on manufacturers, and a discussion of national benefits and costs.

(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 pursuant to the Act. DOE’s analysis included: (1) a discussion of the need for, and objectives of, the rule; (2) a discussion of significant issues raised in response to DOE’s interim regulatory flexibility analysis; (3) a description and estimate of the number of small entities affected; (4) a description and estimate of compliance requirements; and (5) a discussion of 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 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 such, 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 the final rule, 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 May 19, 2022, DOE published a proposed rule. 87 Fed. Reg. 30610. DOE also held a public meeting about the proposed rule on June 23, 2022. DOE stated that it received 28 comments on the proposed rule from: utility associations; manufacturers; utilities, utilities filing jointly, or utility representatives; efficiency/environmental advocates; and trade associations. The entities are listed in Table II.3 of the final rule. DOE responded to comments in the final rule.

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

DOE stated that the final rule contains information collection requirements subject to the Act, as amended, and that OMB reviewed and approved those requirements under OMB Control Number 1910-1400. DOE stated that the public reporting burden associated with this final rule 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.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that the Office of Information and Regulatory Affairs (OIRA) in OMB determined that this final rule is a significant regulatory action within the scope of the Order, as amended. Accordingly, DOE stated that it provided OIRA with an assessment, including the underlying analysis, of benefits and costs anticipated from 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 planned regulation, and an explanation why the final rule is preferable to identified potential alternatives.

Executive Order No. 13132 (Federalism)

DOE determined that the final rule would 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. Therefore, DOE stated that no further action is required under the Order.