



441 G St. N.W.
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January 2, 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 Furnaces*

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 Consumer Furnaces” (RIN: 1904-AD20). We received the rule on December 19, 2023. It was published in the *Federal Register* as a final rule on December 18, 2023. 88 Fed. Reg. 87502. The effective date is February 16, 2024.

According to DOE, the Energy Policy and Conservation Act, as amended¹ (EPCA), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including consumer furnaces. DOE stated that EPCA also requires the agency to determine periodically whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this final rule, DOE stated that it is adopting amended energy conservation standards for consumer furnaces, specifically non-weatherized gas furnaces and mobile home gas furnaces. DOE determined that the amended energy conservation standards for the subject 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). The rule was published in the *Federal Register* on

¹ Pub. L. No. 94-163, 89 Stat. 871, 969 (Dec. 22, 1975), *codified at* 42 U.S.C. §§ 6291–6317. In the footnotes to this final rule, DOE clarified that all references to EPCA in the rule refer to the statute as amended through the Energy Act of 2020, Pub. L. No. 116-260, 134 Stat. 2418 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A-1 of EPCA.

December 18, 2023. 88 Fed. Reg. 87502. DOE sent us confirmation that the rule was received by both houses of Congress on December 20, 2023. Email from Paralegal Specialist, Department of Energy, to Staff Attorney, GAO, *Subject: DOE Rule Submission Rin 1904-AD20* (Dec. 22, 2023). The rule has a stated effective date of February 16, 2024. 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 cursive script that reads "Shirley A. Jones".

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 FURNACES”
(RIN: 1904-AD20)

(i) Cost-benefit analysis

In this final rule, the Department of Energy (DOE) concluded that 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. Specifically, with regards to technological feasibility, DOE noted that products achieving these standard levels are already commercially available for all product classes covered by the final rule. As for economic justification, DOE stated it conducted an economic analysis that shows that the benefits of the standards exceed, to a great extent, the burdens of the standards.

Using a 7-percent discount rate for consumer benefits and costs and nitrogen oxide and sulfur dioxide emissions reduction benefits, and a 3-percent discount rate case for greenhouse gases social costs, DOE estimated the cost of the standards for non-weatherized gas furnaces (NWGFs) and mobile home gas furnaces (MHGFs) is \$511 million per year in increased product costs, while the estimated annual benefits are \$1,054 million in reduced product operating costs, \$1,021 million in climate benefits, and \$987 million in health benefits. The net benefit amounts to \$2,551 million per year. DOE noted that the net benefits are substantial even in the absence of the climate benefits, and DOE expressed that it would adopt the same standards in the absence of such benefits.

DOE stated that the significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking. For example, DOE stated that some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. DOE explained that the impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluated the significance of energy savings on a case-by-case basis. DOE projected that the standards in this final rule will result in estimated national energy savings of 4.77 quad (full-fuel-cycle), the equivalent of the primary annual energy use of 51 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. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities affected, (4) a description of compliance requirements, and (5) a description of significant alternatives DOE considered and steps the agency took to minimize significant economic impacts on small entities.

(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 NWGF and MHGF 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 NWGFs and MHGFs 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.

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.*

According to DOE, the Energy Policy and Conservation Act, as amended² (EPCA), provides that, not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking (NPR) including new proposed energy conservation standards. On July 7, 2022, DOE published a NPR (July 2022 NPR) in the *Federal Register*. 87 Fed. Reg. 40590. Additionally, on August 30, 2022, DOE published in the *Federal Register* a notice of data availability (NODA) (August 2022 NODA) announcing an extension of the comment period, making available a revised version of the life-cycle cost (LCC) spreadsheet supporting the July 2022 NPR, and announcing a public meeting webinar on

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September 6, 2022, to assist stakeholders with operation of the LCC spreadsheet. 87 Fed. Reg. 52861. DOE stated that it received 3,636 comments in response to the July 2022 NOPR and August 2022 NODA from interested parties identified 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. According to DOE, this requirement has been approved by OMB under OMB Control Number 1910-1400. DOE estimated the public reporting burden for the certification 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 this final rule pursuant to sections 6291–6309 of title 42, and section 2461 note of title 28, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

In this final rule, DOE stated that the Office of Information and Regulatory Affairs (OIRA) in OMB has determined that the rule constitutes a “significant regulatory action” within the scope of the Order. Pursuant to the Order, DOE stated that it provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the 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 rule, and an explanation why the rule is preferable to the identified potential alternatives.

Executive Order No. 13132 (Federalism)

DOE determined that this 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 within the meaning of the Order.