



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

B-336328

May 17, 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: Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings*

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) titled “Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings” (RIN: 1904-AB96). We received the rule on May 6, 2024. It was published in the *Federal Register* as a final rule on May 1, 2024. 89 Fed. Reg. 35384. The effective date of the rule is July 15, 2024.

According to DOE, this final rule establishes energy performance standards for the new construction and major renovation of federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings per the Energy Conservation and Production Act (ECPA), as amended by the Energy Independence and Security Act of 2007 (EISA). See *generally* 42 U.S.C. § 6872. DOE stated that consistent with the requirements of ECPA and EISA, it is establishing federal building energy performance standards that require federal agencies to reduce their use of on-site use of fossil fuels (which include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils) consistent with the targets of ECPA and EISA. DOE also stated that the rule also provides processes by which federal agencies may petition DOE for a modification to the final standard.

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". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

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
TITLED
“CLEAN ENERGY FOR NEW FEDERAL BUILDINGS
AND MAJOR RENOVATIONS OF FEDERAL BUILDINGS”
(RIN: 1904-AB96)

(i) Cost-benefit analysis

The Department of Energy (DOE) prepared an analysis of the costs and benefits of this final rule. DOE estimates the total annualized monetized benefits to be \$256.4 million at a 3 percent discount rate and \$161.1 million at a 7 percent discount rate. DOE estimates the total annualized monetized cost to be \$204.1 million at a 3 percent discount rate and \$91.4 million at a 7 percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DOE certified that this final rule will not have a significant economic impact on a substantial number of 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 determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million, updated annually for inflation, in any one year.

(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 final rule. In its submission to us, DOE stated that the Act is not applicable to the rule.

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

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

On March 23, 2023, DOE issued a proposed rule. 87 Fed. Reg. 78382. DOE stated that it held a public meeting on the proposed rule on January 5, 2023, and that public comments were accepted through March 23, 2023. DOE provided a list of the individuals and interested parties who commented on the rule. DOE stated that it addressed comments in this final rule.

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

DOE determined that this final rule will not impose new information or recordkeeping requirements.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to sections 6831–6832, 6834–6836, 7101 *et seq.*, and 8253–8254 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this regulatory action constitutes a significant regulatory action under the Order.

Executive Order No. 13132 (Federalism)

DOE determined that this final rule does not have federalism implications.