



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

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May 20, 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 Water Heaters*

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 Water Heaters” (RIN: 1904-AD91). We received the rule on May 9, 2024. It was published in the *Federal Register* as a final rule on May 6, 2024. 89 Fed. Reg. 37778. The stated effective date of the rule is July 5, 2024.

The final rule adopts amended energy conservation standards for consumer water heaters pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975). DOE has determined that amended energy conservation standards for these 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 *Congressional Record* reflects receipt of this rule by the Senate and House on May 8, 2024. See 170 Cong. Rec. S3650 (May 9, 2024); 170 Cong. Rec. H3002 (May 10, 2024). The rule has a stated effective date of July 5, 2024. 89 Fed. Reg. 37778. Therefore, the stated effective date is less than 60 days from the date of congressional receipt.

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 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 CONSUMER WATER HEATERS”  
(RIN: 1904-AD91)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this final rule.

Using a 7 percent discount rate for consumer benefits and costs and health benefits from reduced emissions of specified types, and a 3 percent discount rate case for climate benefits from reduced emissions of specified types, DOE estimated that the cost of the rule would be \$2,623 million per year in increased equipment costs, while the estimated annual benefits would be \$5,655 million in reduced equipment operating costs, \$1,051 in monetized climate benefits, and \$1,416 in monetized health benefits, yielding a net benefit of \$5,499 per year.

Using a 3 percent discount rate for all benefits and costs, DOE estimated that the cost of the rule would be \$2,586 million per year in increased equipment costs, while the estimated annual benefits would be \$7,566 million in reduced operating costs, \$1,051 million in monetized climate benefits, and \$2,033 million in monetized health benefits, yielding a net benefit of \$8,065 million per year.

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

In this final rule, DOE prepared a Final Regulatory Flexibility Analysis that included a discussion of the need for and objectives of, the rule; a description and estimated number of the small entities affected by the rule; a description of the reporting, recordkeeping, and other compliance requirements of the rule; and a discussion of significant alternatives considered, and steps taken 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 in the form of: (1) investment in research and development and in capital expenditures by consumer water heater 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 water heaters starting at the compliance date for the applicable standard.

DOE stated that it has responded to the content requirements of the Act through the supplementary information section of the rule and through the technical support document accompanying the rule.

(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.

The final rule does not discuss the Act. In its submission to us, DOE stated that it did not prepare a statement regarding compliance with the Act.

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

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

On July 8, 2023, DOE published a proposed rule. 88 Fed. Reg. 49058. DOE received 2,950 comments from interested parties. DOE responded to comments in the final rule, including through direct references to 54 written submissions that DOE deemed substantive.

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

DOE stated that it has already established collection-of-information requirements associated with certification and recordkeeping requirements attributable to consumer water heaters, and that these information collection requirements have been approved previously by OMB under Control Number 1910-1400. DOE further stated that the public reporting burden associated with these information collection requirements 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 this final rule pursuant to section 2461 note of title 28 and sections 6291 through 6317 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

OMB determined that this final rule is 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 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 does not have significant federalism implications. Specifically, DOE determined that the 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.