



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

B-334199

April 22, 2022

The Honorable Joe Manchin  
Chairman  
The Honorable John Barrasso  
Ranking Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Energy: Baseline Energy Efficiency Standards Update for New Federal Commercial and Multi-Family High-Rise Residential 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) entitled "Baseline Energy Efficiency Standards Update for New Federal Commercial and Multi-Family High-Rise Residential Buildings" (RIN: 1904-AE44). We received the rule on April 7, 2022. It was published in the *Federal Register* as a final rule on April 7, 2022. 87 Fed. Reg. 20267. The effective date is June 6, 2022.

DOE stated that it is publishing this final rule to implement provisions in the Energy Conservation and Production Act that require DOE to update the baseline federal energy efficiency performance standards for the construction of new federal commercial and multi-family high-rise residential buildings. See *generally* Pub. L. No. 110-140, 121 Stat. 1614 (Dec. 19, 2007). According to DOE, this rule updates the baseline federal commercial standard to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1-2019.

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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, although DOE did not specifically mention the CRA's 60-day delay in effective date requirement, DOE stated that notice and comment procedures were unnecessary for this notice in accordance with section 553(b)(3)(B) of the Administrative Procedure Act. Specifically, DOE stated that pertinent

determinations relied upon in the final rule were previously subject to notice and comment. See 82 Fed. Reg. 34513 (July 25, 2017); 83 Fed. Reg. 8463 (Feb. 27, 2018); 86 Fed. Reg. 20674 (Apr. 21, 2021); 86 Fed. Reg. 40543 (July 28, 2021). DOE stated that these determinations are equally applicable to this final rule. Thus, DOE asserted that providing notice and comment again would be unnecessary. See 5 U.S.C. § 553(b)(3)(B).

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, reading "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  
“BASELINE ENERGY EFFICIENCY STANDARDS UPDATE  
FOR NEW FEDERAL COMMERCIAL AND MULTI-FAMILY  
HIGH-RISE RESIDENTIAL BUILDINGS”  
(RIN: 1904-AE44)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this final rule. Based on a seven percent discount rate for consumer benefits and costs and health benefits, and a three percent discount rate case for greenhouse gas social climate costs, DOE estimates that this rulemaking will result in –\$32.7 million per year in increased equipment costs, while the estimated annual benefits are \$52.5 million in reduced equipment operating costs, \$19.1 million in climate benefits, and \$18.1 million in health benefits. DOE also stated that, in this case, the net monetized benefit amounts to \$122.4 million per year. Based on a three percent discount rate for all monetized benefits and costs, DOE estimates the cost of this rulemaking is –\$32.7 million per year in increased equipment costs, while the estimated annual benefits are \$94.9 million in reduced equipment operating costs, \$19.1 million in climate benefits, and \$30.7 million in health benefits. Lastly, DOE stated that, in this case, the net monetized benefit amounts to \$177.5 million per year.

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

DOE stated that it has determined that a notice of proposed rulemaking is not required by 5 U.S.C. § 553 or any other law for issuance of this final rule. DOE also stated that the analytical requirements of the RFA, therefore, do not apply. 5 U.S.C. § 605(b).

(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 contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year by state, local, and tribal governments, in the aggregate, or by the private sector, so the requirements under the Unfunded Mandates Reform Act do not apply.

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

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

According to DOE, this final rule, which updates energy efficiency performance standards for the design and construction of new federal buildings, is a rule relating to public property, and therefore is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirement to publish a notice of proposed rulemaking. 5 U.S.C. 553(a)(2). Additionally, DOE stated that pertinent determinations relied upon in this final rule were

previously subject to notice and comment. See 82 Fed. Reg. 34513 (July 25, 2017); 83 Fed. Reg. 8463 (Feb. 27, 2018); 86 Fed. Reg. 20674 (Apr. 21, 2021); 86 Fed. Reg. 40543 (July 28, 2021). According to DOE, these determinations are equally applicable to this final rule. Thus, DOE asserts that providing notice and comment again would be unnecessary. See 5 U.S.C. § 553(b)(3)(B).

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

DOE stated that this final rule will not impose new information or record keeping requirements. Accordingly, DOE asserted that Office of Management and Budget (OMB) clearance is not required under the PRA.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to sections 6831–6832, 6834–6835, and 7101 *et seq.* of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that this final rule is an economically significant regulatory action under the Order. DOE also stated that OMB has completed its review of the final rule.

Executive Order No. 13132 (Federalism)

DOE stated that it examined this final rule and determined that it does not preempt state law and does 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.