



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-335370

June 16, 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 Consumer Pool 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 Pool Heaters” (RIN: 1904-AD49). We received the rule on June 8, 2023. It was published in the *Federal Register* as a final rule on May 30, 2023. 88 Fed. Reg. 34624. The effective date is July 31, 2023.

The final rule, according to DOE, adopts new and amended energy conservation standards for consumer pool heaters in accordance with the Energy Policy and Conservation Act. Pub. L. No. 94-163, 89 Stat. 871 (Dec. 22, 1975). DOE stated it determined that the new and 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). Here, the final rule was published in the *Federal Register* on May 30, 2023. 88 Fed. Reg. 34624. The *Congressional Record* does not yet reflect the date of receipt of the rule by either the House of Representatives or the Senate. However, DOE provided documentation that reflected receipt by both the House of Representatives and the Senate on June 14, 2023. Email from Attorney-Advisor, DOE, to Senior Attorney, GAO, *Subject: RE: DOE Rule Submission RIN 1904-29* (June 14, 2023). The rule has an effective date of July 31, 2023. Therefore, based on the date of congressional receipt, the 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 fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy  
Assistant General Counsel  
Legislation, Regulation & Energy Efficiency  
Department of Energy

ENCLOSURE

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 POOL HEATERS”  
(RIN: 1904-AD49)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an analysis of the costs and benefits of this final rule. Economic benefits, according to DOE, include reduced greenhouse gas (GHG) emissions, and consumer benefits include domestic monetary savings that occur as a result of purchasing the covered products. DOE also stated that there are global climate benefits associated with reduced GHG emissions.

Further, according to DOE, using the seven percent discount rate, the estimated cost of the rule is \$74.1 million per year in increased equipment costs, while the estimated annual benefits are \$208 million in reduced equipment operating costs, \$88.3 million in climate benefits, and \$97.7 million in health benefits, amounting to a net benefit of \$319.8 million per year. According to DOE, using the three percent discount rate, the estimated cost of the rule is \$75.3 million per year in increased equipment costs, while the estimated annual benefits are \$252.7 million in reduced operating costs, \$88.3 million in climate benefits, and \$133.1 million in health benefits, for a net benefit of \$398.8 million per year.

(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. The analysis included: (1) a description of reasons why action is being considered; (2) the objectives of, and legal basis for the rule; (3) a description of the estimated number of small entities regulated; (4) a description and estimate of compliance requirements including differences in cost, if any, for different groups of small entities; (5) duplication, overlap, and conflict with other rules and regulations; and (6) 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 determined this final rule may require expenditures of \$100 million or more in any one year by the private sector. Such expenditures, according to DOE, may include (1) investment in research and development and in capital expenditures by consumer pool heaters 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 consumer pool heaters, starting at the compliance date for the applicable standard.

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

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

On April 15, 2022, DOE published a notice of proposed rulemaking. 87 Fed. Reg. 22640. DOE received 11 comments on the proposed rule from a trade association, utility associations, efficiency organizations, manufacturers, and a state agency. DOE responded to comments in this final rule.

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

DOE stated that this final rule contains a collection of information requirement subject to PRA which has been approved under Office of Management and Budget (OMB) Control Number 1910-1400. DOE further stated that the public reporting burden is estimated to average 35 hours per response.

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that OMB determined this final rule is a significant regulatory action under the Order.

Executive Order No. 13132 (Federalism)

DOE determined this final rule would not have a substantial 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.