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September 16, 2009

The Honorable Jeff Bingaman  
Chairman  
The Honorable Lisa Murkowski  
Ranking Minority Member  
Committee on Energy and Natural Resources  
United States Senate

The Honorable Henry A. Waxman  
Chairman  
The Honorable Joe L. Barton  
Ranking Minority Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Department of Energy: Energy Conservation Program: Energy Conservation Standards for Refrigerated Bottled or Canned Beverage Vending Machines*

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 Refrigerated Bottled or Canned Beverage Vending Machines” (RIN: 1904-AB58). We received the rule on September 3, 2009. It was published in the *Federal Register* as a final rule on August 31, 2009. 74 Fed. Reg. 44,914.

The final rule adopts new energy conservation standards for refrigerated bottled or canned beverage vending machines.

The final rule has an announced effective date of October 30, 2009. The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on August 31, 2009, but not received by our office until September 3, 2009. Therefore, the final rule does not have the required 60-day delay in effective date.

Enclosed is our assessment of the 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.

Our review of the procedural steps taken indicates that, with the exception of the delay in the rule's effective date, DOE complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Daniel Cohen  
Assistant General Counsel for  
Legislation and Regulatory Law  
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 REFRIGERATED  
BOTTLED OR CANNED BEVERAGE VENDING MACHINES"  
(RIN: 1904-AB58)

(i) Cost-benefit analysis

DOE performed a cost-benefit analysis in conjunction with the final rule. DOE determined, using a 7-percent discount rate for the annualized cost analysis, that the cost of the standards established in the final rule for Class A and Class B vending machines is \$24.0 million per year in increased equipment and installation costs, while the estimated annualized benefits are \$41.8 million per year in reduced equipment operating costs and \$9.0 million in CO<sub>2</sub> reductions, for a net benefit of \$26.8 million per year. Using a 3-percent discount rate, the cost of the standards is \$23.1 million per year in increased equipment and installation costs, while the benefits are \$49.1 million per year in reduced equipment operating costs and \$10.3 million in CO<sub>2</sub> reductions, for a net benefit of \$36.3 million per year.

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

DOE believes that the final rule will have a significant economic impact on a substantial number of small entities, and therefore prepared a final regulatory flexibility analysis. DOE determined that one of the three major companies that supply roughly 90 percent of all equipment sold is a small business, and that the five manufacturers that supply the remaining 10 percent of industry shipments are all considered small businesses. DOE determined that the impacts of the final rule for the small business manufacturer with a large market share would not be significantly different than the impacts for large business manufacturers. For small business manufacturers with small market shares, DOE estimates that the costs of certification will be significantly lower than the costs of a major manufacturer. DOE analyzed lower Trial Standard Levels (TSL) that might lessen the impacts on small entities; however, the Energy Policy and Conservation Act (EPCA) requires DOE to adopt the maximum level that is technologically feasible and economically justified. 42 U.S.C. § 6295(o)(2)(A) and 42 U.S.C. § 6316(e)(1).

(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 the final rule would not contain an intergovernmental mandate, nor result in the expenditures of \$100 million or more in one year by the private sector.

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

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

On June 28, 2006, DOE commenced the rulemaking by publishing a framework document for the rulemaking and by giving notice of a public meeting and of the availability of the document for review and public comment. 71 Fed. Reg. 36,715. DOE held a public meeting in Washington, D.C., on July 11, 2006. DOE issued an advanced notice of proposed rulemaking (ANOPR), which was published in the *Federal Register* on June 16, 2008. 73 Fed. Reg. 34,094. DOE held a public meeting in Washington, D.C., on June 26, 2008, to present the methodology and results of the ANOPR analyses and to receive oral comments from those who attended. DOE issued a notice of proposed rulemaking, published in the *Federal Register* on May 29, 2009. 74 Fed. Reg. 26,022. DOE held a public meeting on June 17, 2009, in Washington, D.C., to receive oral comments on and solicit information relevant to the proposed rule. DOE responded to the comments on the proposed rule in this final rule. 74 Fed. Reg. 44,914.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This final rule imposes no new information and recordkeeping requirements; therefore, the Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act is not required.

Statutory authorization for the rule

The final rule is authorized by Part A of Title III of the Energy Policy and Conservation Act (EPCA), as amended, 42 U.S.C. § 6291 et. seq.

Executive Order No. 12,866 (Regulatory Planning and Review)

The final rule was determined to be economically significant under the Executive Order. In accordance with the Executive Order, DOE prepared and submitted to OMB an economic analysis outlining the costs and benefits of the final rule.

Executive Order No. 13,132 (Federalism)

DOE determined that the 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.