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February 1, 2016

The Honorable Lisa Murkowski
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Energy and Natural Resources
United States Senate

The Honorable Fred Upton
Chairman
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 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-AD00). We received the rule on January 13, 2016. It was published in the *Federal Register* as a final rule on January 8, 2016. 81 Fed. Reg. 1028.

The final rule amends the energy conservation standards for Class A and Class B beverage vending machines. It also amends the definition for Class A equipment to more unambiguously differentiate Class A and Class B beverage vending machines. Further, the rule amends the definition of combination vending machine, is defining two new classes of combination vending machines, Combination A and Combination B, and is promulgating standards for those new classes. Finally, the rule contains new provisions that DOE will use to verify the appropriate equipment class and refrigerated volume during enforcement testing.

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. Our review of the procedural steps taken indicates that 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,
Regulation and 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
REFRIGERATED BOTTLED OR CANNED BEVERAGE
VENDING MACHINES”
(RIN: 1904-AD00)

(i) Cost-benefit analysis

The Department of Energy (DOE) analyzed the costs and benefits of this final rule. DOE determined that the monetary values for the total annualized net benefits are the sum of (1) the national economic value of the benefits in reduced operating costs, minus (2) the increases in equipment purchase prices and installation costs, plus (3) the value of the benefits of carbon dioxide and nitrous oxide emission reductions, all annualized. DOE noted that the national operating cost savings are domestic U.S. customer monetary savings that occur as a result of market transactions, whereas the value of carbon dioxide reductions is based on a global value. DOE also observed that the assessments of operating cost savings and carbon dioxide savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of beverage vending machines shipped in 2019–2048. Because carbon dioxide emissions have a very long residence time in the atmosphere, the social cost of carbon (SCC) values in future years reflect future emissions impacts that continue beyond 2100.

Using a 7 percent discount rate for benefits and costs other than carbon dioxide reduction (for which DOE used a 3 percent discount rate along with the SCC series that has a value of \$40.0 per metric ton in 2015), DOE estimated the cost of the standards in this rule to be \$1.8 million per year in increased equipment costs, while the annual benefits to be \$22.2 million in reduced equipment operating costs, \$12.8 million in carbon dioxide reductions, and \$1.6 million in reduced nitrous oxide emissions. In this case, DOE estimates the net benefit to be \$35 million per year. Using a 3 percent discount rate for all benefits and costs and the SCC series that has a value of \$40.0 per metric ton in 2015, DOE estimated the cost of the standards to be \$1.9 million per year in increased equipment costs, while the annual benefits to be \$30.2 million per year in reduced operating costs, \$12.8 million in carbon dioxide reductions, and \$2.3 million in reduced nitrous oxide emissions. In this case, DOE estimates the net benefit amounts to \$43 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 for this final rule. The analysis included (1) a description of the estimated number of small entities regulated; (2) a description and estimate of the compliance requirements; (3) a statement concerning duplication, overlap, and conflict with other rules and regulations; and (4) a description of 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 prepared a written statement that estimates the resulting costs, benefits, and other effects on the national economy for this final rule. Such a written statement is required when an agency determines a rule may cause the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

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

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

DOE initiated this rulemaking by preparing a framework document, “Energy Conservation Standards Rulemaking Framework Document for Refrigerated Beverage Vending Machines.” 78 Fed. Reg. 33,262 (June 4, 2013). DOE held a framework public meeting on June 20, 2013. At the meeting and during the comment period on the framework document, DOE received many comments that, according to DOE, helped to identify and resolve issues pertaining to vending machines relevant to this rulemaking. DOE then announced the availability of the preliminary analysis and a public meeting to discuss the preliminary analysis results. 79 Fed. Reg. 46,379 (Aug. 8, 2014). The public meeting to review the preliminary analysis took place on September 16, 2014. On August 19, 2015, DOE published a notice of proposed rulemaking. 80 Fed. Reg. 50,462. On September 29, 2015, DOE held a public meeting to discuss the proposed rule. DOE also reopened the comment period on the proposed rule from October 23, 2015, to November 23, 2015. 80 Fed. Reg. 64,370 (Oct. 23, 2015). DOE responded to comments in the final rule.

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

Manufacturers of beverage vending machines must certify to DOE that their equipment comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their equipment according to the DOE test procedures for beverage vending machines, including any amendments adopted for those test procedures. This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 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 under the authority of section 6291 to 6317 of title 42, United States Code.

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

The Office of Information and Regulatory Review within OMB determined that this regulatory action is not significant under the Order.

Executive Order No. 13,132 (Federalism)

DOE determined that this final rule will 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.