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April 25, 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: Petroleum-Equivalent Fuel Economy Calculation*

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) titled "Petroleum-Equivalent Fuel Economy Calculation" (RIN: 1904-AF47). We received the rule on April 11, 2024. It was published in the *Federal Register* as a final rule on March 29, 2024. 89 Fed. Reg. 22041. The effective date is June 12, 2024.

According to DOE, this final rule revises the value for the petroleum-equivalency factor (PEF). DOE stated that the final rule revises DOE's regulations regarding procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles. DOE also stated that the PEF is used by the Environmental Protection Agency in calculating light-duty vehicle manufacturers' compliance with the Department of Transportation's Corporate Average Fuel Economy standards.

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.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Ami Grace-Tardy
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Department of Energy

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF ENERGY
TITLED
“PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION”
(RIN: 1904-AF47)

(i) Cost-benefit analysis

The Department of Energy (DOE) noted that the petroleum-equivalency factor (PEF) is a numeric value determined through a highly technical analysis, which bounds DOE’s discretion in deriving the value. DOE also noted that, once calculated, the PEF has no independent effects, but serves as an input to calculations that other agencies perform. Thus, according to DOE, the general costs and benefits that could be attributed to these revisions are somewhat removed from this action, and DOE has not attempted to quantify them in this final rule. DOE explained that it expects the decision to retain a fuel content factor over the next several years, when combined with the revised PEF value and methodology, to result in greater petroleum conservation by incentivizing electric vehicle production and adoption. DOE also stated that on the other hand, the phaseout of the fuel content factor and the use of the revised PEF value may lead some manufacturers to incur additional costs because of the potential effects of the revised PEF value on the average fuel economy of their fleets. DOE stated further that the fact that the fuel content factor is phased out over four years, however, should have the effect of mitigating any such costs.

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

DOE certified that this final rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DOE determined 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 Act do not apply.

(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.

DOE did not discuss the Act in this final rule. In its submission to us, DOE stated that the Act does not apply to this rule since it does not increase direct spending.

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

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

On April 11, 2023, DOE published a notice of proposed rulemaking (NPR). 88 Fed. Reg. 21525. DOE noted that it received 20 comments on the NPR. According to DOE, several commenters, including the Alliance for Automotive Innovation (Alliance), expressed concern that auto manufacturers would not have sufficient lead time to incorporate changes into their plans for Model Year 2027 vehicles, given that the new PEF value would significantly impact their Corporate Average Fuel Economy compliance and given that manufacturing changes require significant lead times. DOE stated that on September 14, 2023, it issued letters to member companies of the Alliance that invited recipients to provide data, documents, or analysis to clarify the Alliance's concerns in relation to the proposed effective date. DOE also stated that it published a notification of ex parte communication and request for comments in the *Federal Register*, which stated that DOE sent the September 14, 2023, letters and asked interested stakeholders to provide similar data, documents, or analysis. 88 Fed. Reg. 67682 (Oct. 2, 2023) (Ex Parte Notice). DOE stated further that it incorporated the data it received from the letters and the Ex Parte Notice, it addressed comments it received on the NPR in the final rule, and it also provided a list of commenters.

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

DOE determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

DOE promulgated this final rule pursuant to sections 32901 *et seq.* of title 49, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE stated that the Office of Information and Regulatory Affairs (OIRA) has determined that this action constitutes a significant regulatory action within the scope of the Order. Accordingly, DOE also stated that this action was subject to review by OIRA.

Executive Order No. 13132 (Federalism)

DOE determined that this final rule will not preempt state law, nor will it 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.