



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

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May 15, 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: Statutory Updates to the Advanced Technology Vehicles Manufacturing Program*

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 “Statutory Updates to the Advanced Technology Vehicles Manufacturing Program” (RIN: 1901-AB60). We received the rule on May 3, 2024. It was published in the *Federal Register* as a direct final rule on April 29, 2024. 89 Fed. Reg. 33196. This final rule is effective July 15, 2024, unless adverse comment is received by May 29, 2024. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the direct final rule, a timely withdrawal of this rule will be published in the *Federal Register*.

The final rule amends regulations implementing the direct loan provisions for the Advanced Technology Vehicles Manufacturing Incentive Program established by section 136 of the Energy Independence and Security Act of 2007 (ATVM statute), 42 U.S.C. § 17013. Specifically, this rule amends the existing applicable regulations in order to implement additional categories of advanced technology vehicles added to the ATVM statute by the Infrastructure Investment and Jobs Act and funded by the Inflation Reduction Act of 2022, including certain medium-duty and heavy-duty vehicles, trains, locomotives, maritime vessels, aircraft, and hyperloop technology. This rule also amends the existing applicable regulations to reflect the “ultra efficient” category of advanced technology vehicles added to the ATVM statute through an earlier appropriations act.

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.

A handwritten signature in black ink that reads "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
“STATUTORY UPDATES TO THE ADVANCED TECHNOLOGY VEHICLES
MANUFACTURING PROGRAM”
(RIN: 1901-AB60)

(i) Cost-benefit analysis

The Department of Energy (DOE) conducted an economic analysis of this direct final rule. DOE estimated that the new advanced technology vehicle (ATV) classes under the rule will produce 2–4 more loan applications per year in the 12 months following the effective date of the rule. DOE noted that it does not anticipate requiring additional resources, personnel, or staff time compared to its baseline to process applications in new ATV categories, nor does DOE anticipate any greater administrative costs to the federal government resulting from the rule. However, DOE estimated that each applicant would incur costs related to costs by DOE’s independent advisors in connection with the applicant’s project and a fee at the time of the closing of the loan. DOE estimated between \$54,150 and \$108,300 per year in costs borne by industry for these ATV applications.

DOE stated that the benefits of the rule derive from facilitating the applications for statutorily eligible projects under the program. DOE explained that to date, projects that have been financed in part by the program have produced vehicles that are estimated to have saved over 19 billion gallons of gasoline and created more than 43,000 direct jobs across eight states.

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

According to DOE, it is not obligated to prepare a regulatory flexibility analysis for this direct final rule because there is not a requirement to publish a general notice of proposed rulemaking for rules related to loans under the Administrative Procedure Act (APA).

(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 direct final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million or more, adjusted annually for inflation, in any one year.

(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.*

According to DOE, APA exempts from its notice and comment procedures rulemakings that involve matters relating to public property, loans, grants, benefits, or contracts. DOE stated that because this rule relates to the issuance of loans, notice of proposed rulemaking (and comment thereon) is not required.

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

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

Statutory authorization for the rule

DOE promulgated this direct final rule pursuant to section 17013 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DOE determined that this direct final rule is significant under the Order and submitted it to the Office of Information and Regulatory Affairs for review.

Executive Order No. 13132 (Federalism)

DOE determined that this direct final rule will not preempt state law and 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.