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United States Government Accountability Office
Washington, DC 20548

B-317495

November 26, 2008

The Honorable Jeff Bingaman
Chairman
The Honorable Pete V. Domenici
Ranking Minority Member
Committee on Energy and Natural Resources
United States Senate

The Honorable John D. Dingell
Chairman
The Honorable Joe Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Energy: Advanced Technology Vehicles Manufacturing Incentive 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 (Department), entitled “Advanced Technology Vehicles Manufacturing Incentive Program” (RIN: 1901-AB25). We received the rule on November 12, 2008. It was published in the *Federal Register* as an “interim final rule; request for comment” on November 12, 2008. 73 Fed. Reg. 66,721.

The interim final rule establishes the Advanced Technology Vehicles Manufacturing Incentive Program authorized by section 136 of the Energy Independence and Security Act of 2007, as amended. Public Law 110-140, Dec. 19, 2007. Section 136 provides for loans and grants to eligible automobile manufacturers and component suppliers for projects that reequip, expand, and establish manufacturing facilities in the United States to produce light-duty vehicles and provide improvements in fuel economy performance beyond certain specified levels. The interim final rule establishes applicant eligibility and project eligibility requirements for both the loan and the grant programs. The interim final rule also establishes the application requirements and the general terms for the loan program, for which Congress has already appropriated funds under Continuing Resolution, 2009, Public Law 110-329, Sept. 30, 2008.

Section 808(2) of title 5, United States Code, exempts any rule for which “an agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,” from the 60-day delay in the effective date otherwise required by section 801(a)(3)(A). The Department made the required “good cause” finding; the effective date of this interim final rule is November 12, 2008. Comments must be received on or before December 12, 2008.

Enclosed is our assessment of the Department’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 indicates that the Department 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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Michael W. Bowers
Attorney, Office of 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
"ADVANCED TECHNOLOGY VEHICLES
MANUFACTURING INCENTIVE PROGRAM"
(RIN: 1901-AB25)

(i) Cost-benefit analysis

The Department did not conduct a cost-benefit analysis.

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

The rule is published as an interim final rule, and, therefore, a regulatory flexibility analysis is not required under the Act.

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

The interim final rule establishes requirements that persons voluntarily seeking loans for projects that would use certain advanced vehicle technologies must satisfy as a condition of a federal loan. For this reason, the Department concluded that the rule falls under the exceptions in the definitions of “federal intergovernmental mandate” and “federal private sector mandate” for requirements that are a condition of federal assistance or a duty arising from participation in a voluntary program, and that the Act does not apply to this rulemaking.

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

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

The Department issued this rule as an interim final rule. In the Continuing Resolution, 2009 (Pub. L. No. 110-329, § 129, 122 Stat. 3574, 3578 (2008)), Congress amended section 136 of the Energy Independence and Security Act of 2007 to require the Department to issue an interim final rule—a rule that is issued and becomes effective without prior public notice and comment—to implement the Advanced Technology Vehicles Manufacturing Incentive Program. Congress required that this interim final rule be promulgated no later than 60 days after the enactment of the Resolution. 42 U.S.C. § 17013. In addition, the Department notes the current adverse credit market conditions and believes it would be contrary to the public interest to delay the effective date of regulations implementing a program that may help

respond to those conditions. Similarly, the Department finds good cause, pursuant to 5 U.S.C. § 553(d)(3), to waive the 30-day delay in the effective date required by the Administrative Procedure Act.

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

This interim final rule contains a collection of information that has been submitted to the Office of Management and Budget (OMB) with a request for emergency processing. The Department will publish a notice of approval once received from OMB.

Statutory authorization for the rule

The interim final rule is promulgated under the authority in 42 U.S.C. § 17013, as amended by Pub. L. No. 110-329.

Executive Order No. 12,866

OMB reviewed this interim final rule and considers it to be an economically significant regulatory action under this Order.

Executive Order No. 13,132 (Federalism)

The Department determined that the interim 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.