



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

B-337021

January 30, 2025

The Honorable Mike Crapo  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Jason Smith  
Chairman  
The Honorable Richard Neal  
Ranking Member  
Committee on Ways and Means  
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit*

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 the Treasury, Internal Revenue Service (IRS) entitled “Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit” (RIN: 1545-BR17). We received the rule on January 16, 2025. It was published in the *Federal Register* on January 15, 2025. 90 Fed. Reg. 4006. The stated effective date of the rule is January 15, 2025.

This rule sets forth final regulations regarding the clean electricity production credit and the clean electricity investment credit established by the Inflation Reduction Act of 2022. The regulations provide rules for determining greenhouse gas emissions rates resulting from the production of electricity; petitioning for provisional emissions rates; and determining eligibility for these credits in various circumstances. The regulations affect all taxpayers that claim the clean energy production credit with respect to a qualified facility or the clean electricity investment credit with respect to a qualified facility or energy storage technology, as applicable, that is placed in service after 2024.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the *Federal Register* on January 15, 2025. 90 Fed. Reg. 4006. The rule was received by the Senate on January 17, 2025, 171 Cong. Rec. S394 (daily ed. January 27, 2025), and was received by the House of Representatives on January 22, 2025, 171 Cong. Rec. H383 (daily ed. January 23, 2025). The rule has a stated effective date of January 15, 2025. IRS noted that the regulations apply to qualified facilities (and for §§ 1.48E-1 through 1.48E-4, energy storage technologies) placed in

service after December 31, 2024, and during taxable years ending on or after January 15, 2025. *Id.* at 4092. Therefore, the stated effective date is less than 60 days from January 15, 2025.<sup>1</sup>

Enclosed is our assessment of IRS'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 style with a large, looped initial "S".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Martina Greene  
Office of Chief Counsel  
Internal Revenue Service

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<sup>1</sup> IRS stated in the rule that there was good cause for the rule to be effective upon publication. 90 Fed. Reg. 4094–4095 (Jan. 15, 2025). CRA includes two exceptions to its 60-day delayed effective date requirement for major rules. 5 U.S.C. § 808. The rule clearly does not meet the first exception, which applies to rules related to “hunting, fishing, or camping.” *Id.* at § 808(1). The second exception only applies when the agency has found good cause to waive notice and public procedure requirements when promulgating the rule, and incorporates the finding and a brief statement therefor in the rule. 5 U.S.C. § 808(2). Because IRS did not make a finding that notice and public procedure were impracticable, unnecessary, or contrary to the public interest, this exception also does not apply.

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
ENTITLED  
“SECTION 45Y CLEAN ELECTRICITY PRODUCTION CREDIT  
AND SECTION 48E CLEAN ELECTRICITY INVESTMENT CREDIT”  
(RIN: 1545-BR17)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) indicated that it did not have sufficient data to precisely determine the likely extent of the increased costs of compliance. See 90 Fed. Reg. 4094 (Jan. 15, 2025). IRS stated that it intended and expected that this rule will deliver benefits across the economy that will beneficially impact various industries. See *id.*

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

IRS stated that it did not determine whether the rule will likely have a significant economic impact on a substantial number of small entities. 90 Fed. Reg. 4093. According to IRS, there is a possibility of significant economic impact on a substantial number of small entities. *Id.* at 4094.

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

IRS determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. See 90 Fed. Reg. 4095.

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

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

On August 30, 2023, IRS published a proposed rule. 88 Fed. Reg. 60018. IRS also published proposed rules on November 22, 2023, 88 Fed. Reg. 82188, and June 3, 2024, 89 Fed. Reg. 47792. IRS stated that they received comments from various interested parties. See 90 Fed. Reg. 4007. IRS responded to comments in the rule. *Id.*

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

IRS determined that this rule contains information collection requirements under the Act. 90 Fed. Reg. 4092–4093.

Statutory authorization for the rule

IRS promulgated this rule pursuant to 26 U.S.C. §§ 7805, 45Y, and 48E.

Executive Order No. 12866 (Regulatory Planning and Review)

According to IRS, this rule is not subject to the Act. See 90 Fed. Reg. 4092.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. See 90 Fed. Reg. 4095.