



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

B-336937

December 27, 2024

The Honorable Ron Wyden
Chairman
The Honorable Mike Crapo
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: Definition of Energy Property and Rules Applicable to the Energy 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 “Definition of Energy Property and Rules Applicable to the Energy Credit” (RIN: 1545-BO40). We received the rule on December 5, 2024. It was published in the *Federal Register* on December 12, 2024. 89 Fed. Reg. 100598. The stated effective date of the rule is December 12, 2024.

According to IRS, this rule sets forth final rules relating to the energy credit, including rules for determining whether investments in energy property are eligible for the energy credit and for implementing certain amendments made by the Inflation Reduction Act of 2022. IRS stated that the final regulations impact taxpayers who invest in energy property eligible for the energy credit.

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 *Congressional Record* reflects that the House of Representatives received the rule but does not reflect the date of receipt. 170 Cong. Rec. H7227 (Dec. 16, 2024). IRS provided documentation showing the House of Representatives received the rule on December 6, 2024. Email from IRS to GAO, *Subject: House and Senate receipts for TD 10015 (Perez)* (Dec. 10, 2024). The Senate received the rule on December 6, 2024. 170 Cong. Rec. S6911 (daily ed. Dec. 10, 2024). The rule was published in the *Federal Register* on December 12, 2024. 89 Fed. Reg 100598. The rule has a

stated effective date of December 12, 2024. Therefore, the stated effective date is less than 60 days from the date of publication in the *Federal Register*.¹

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.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Aron Cosby
Federal Register Liaison
Internal Revenue Service

¹ IRS stated in the rule that there was good cause for the rule to be effective upon publication in accordance with 5 U.S.C § 808(2). 89 Fed. Reg. 100645. 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, which IRS cites in its rule, 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
“DEFINITION OF ENERGY PROPERTY AND RULES
APPLICABLE TO THE ENERGY CREDIT”
(RIN: 1545-BO40)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) prepared an analysis of the impact of this rule. See 89 Fed. Reg. 100644 (Dec. 12, 2024). According to IRS, the rule will provide greater clarity to taxpayers for purposes of claiming the section 48 credit for energy property. IRS stated that the increased use of the section 48 credit will incentivize the development of technologies for energy generation and storage. IRS also stated that it expects the rule will deliver benefits across the economy that will beneficially impact various industries. 89 Fed. Reg. at 100644.

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

IRS determined that this rule may have an economic impact on substantial numbers of small entities and prepared a Final Regulatory Flexibility Analysis. See 89 Fed. Reg. at 100644.

(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 does not include a mandate that may result in expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. 89 Fed. Reg. at 100645.

(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.

IRS did not discuss the Act in this rule. In its submission to us, IRS indicated that the Act is not applicable to the rule.

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

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

On November 22, 2023, IRS published a proposed rule and notice of public hearing. 88 Fed. Reg. 82188. IRS subsequently published two correction notices with respect to the proposed rule on January 12, 2024, and February 22, 2024. 89 Fed. Reg. 2182, 13293. IRS stated that it received comments on the proposed rule. IRS summarized the comments and explained its revisions to the proposed rule in this final rule.

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

IRS determined that this rule contains information collection requirements under PRA and described relevant information collection requirements previously approved by OMB. See 89 Fed. Reg. 100644–100645.

Statutory authorization for the rule

IRS promulgated this rule pursuant to sections 48, 6418, and 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this rule is not subject to the Order's regulatory review procedures because it is a tax regulatory action. 89 Fed. Reg. 100643.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. 89 Fed. Reg. 100645.