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B-337004

January 27, 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: Credit for Production of Clean Hydrogen and 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 “Credit for Production of Clean Hydrogen and Energy Credit” (RIN: 1545-BQ97). We received the rule on January 2, 2025. It was published in the *Federal Register* on January 10, 2025. 90 Fed. Reg. 2224. The stated effective date of the rule is January 10, 2025.

This rule contains final regulations implementing the credit for production of clean hydrogen and certain provisions of the energy credit as enacted by the Inflation Reduction Act of 2022. The regulations provide rules for: determining lifecycle greenhouse gas emissions rates resulting from hydrogen production processes; petitioning for provisional emissions rates; verifying production and sale or use of clean hydrogen; modifying or retrofitting existing qualified clean hydrogen production facilities; using electricity from certain renewable or zero-emissions sources to produce qualified clean hydrogen; and electing to treat part of a specified clean hydrogen production facility instead as property eligible for the energy credit. These regulations affect all taxpayers who produce qualified clean hydrogen and claim the clean hydrogen production credit, elect to treat part of a specified clean hydrogen production facility as property eligible for the energy credit, or produce electricity from certain renewable or zero-emissions sources used by taxpayers or related persons to produce qualified clean hydrogen.

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* does not reflect the date of receipt by the House of Representatives or the Senate. The rule was published in the *Federal Register* on January 10, 2025. 90 Fed. Reg. 2224. The rule has a stated effective date of January 10, 2025. IRS stated that the rule applies to taxable years beginning after

December 26, 2023, and that for taxable years beginning after December 31, 2022, and or before December 26, 2023, taxpayers may choose to rely upon the proposed regulations, provided that taxpayers follow the proposed regulations in their entirety and in a consistent manner. *Id.* at 2305. Therefore, the stated effective date is less than 60 days from January 10, 2025.¹

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. 90 Fed. Reg. 2308. 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
“CREDIT FOR PRODUCTION OF CLEAN HYDROGEN AND ENERGY CREDIT”
(RIN: 1545-BQ97)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury, Internal Revenue Service (IRS) indicated that it did not prepare an analysis of the costs and benefits of this rule.

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

IRS stated that it has not determined whether this rule will likely have a significant economic impact on a substantial number of small entities. 90 Fed. Reg. 2307 (Jan. 10, 2025).

(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, updated annually for inflation, in any one year. See 90 Fed. Reg. 2308.

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

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

On December 26, 2023, IRS published a proposed rule. 88 Fed. Reg. 89220. On April 11, 2024, IRS also published a supplemental notice of proposed rulemaking. 89 Fed. Reg. 25551. IRS stated that they received comments from various interested parties. See 90 Fed. Reg. 2227. 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. 2306.

Statutory authorization for the rule

IRS promulgated this rule pursuant to 26 U.S.C. §§ 45V(c)(1)(B), 45V(e)(5), 45V(f), 48(a)(15)(C), 48(a)(15)(E), 48(a)(16), 6001, and 7805(a).

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this rule is not subject to the Order. 90 Fed. Reg. 2305.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. See 90 Fed. Reg. 2308.