

B-332871

January 28, 2021

Chair
Ranking Member
Committee on Finance
United States SenateThe Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Republican Leader
Committee on Ways and Means
House of RepresentativesSubject: *Department of the Treasury, Internal Revenue Service: Credit for Carbon Oxide Sequestration*

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 Carbon Oxide Sequestration" (RIN: 1545-BP42). We received the rule on January 15, 2021. It was published in the *Federal Register* as final regulations on January 15, 2021. 86 Fed. Reg. 4728. The stated effective date of the rule is January 13, 2021.

IRS states the final rule provides guidance regarding the credit for carbon oxide sequestration under section 45Q of the Internal Revenue Code, as amended by the Bipartisan Budget Act of 2018. 26 U.S.C. § 45Q. According to IRS, this rule provides procedures to determine adequate security measures for the geological storage of qualified carbon oxide, exceptions to the general rule for determining the taxpayer to which a section 45Q credit is attributable, procedures for a taxpayer to make an election to allow third-party taxpayers to claim the section 45Q credit, standards for measuring utilization of qualified carbon oxide, and rules for credit recapture. IRS states that this rule affects persons who physically or contractually ensure the capture and disposal of qualified carbon oxide, use of qualified carbon oxide as a tertiary injectant in a qualified enhanced oil or natural gas recovery project, or utilization of qualified carbon oxide in a manner that qualifies for the 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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). IRS determined it had good cause to waive the delay. According to IRS, following the amendments to section 45Q, IRS published a proposed rule to provide certainty to taxpayers. IRS states that, as demonstrated by the wide variety of public comments in response to the proposed rule, taxpayers and other stakeholders lacked certainty regarding the proper application of the statutory rules under section 45Q. According to IRS, certainty with respect to these provisions is essential so that taxpayers can accurately predict the economic return from making particular investments and make informed business decisions. For this reason, IRS has determined that an expedited effective date of the final rule would provide needed guidance on what the law requires for businesses to begin job-generating construction of capital intensive projects qualifying for section 45Q credits during a time of economic uncertainty and distress.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie E. Mudd
Director, Legal Processing Division
Department of the Treasury

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 CARBON OXIDE SEQUESTRATION”
(RIN: 1545-BP42)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) stated that the features of this final rule may lower compliance burden and increase economic investment by lowering regulatory barriers to entry, compared to a baseline of having only the statute without the rule. According to IRS, this rule provides taxpayers with greater clarity regarding the definition of terms contained in the statute relative to the alternative of taxpayers having no further descriptions than the statute; more flexibility in methods to establish qualifications for the credit relative to prior guidance; and more transparency regarding business arrangements related to the section 45Q credit relative to the no-action baseline.

In its economic analysis, IRS analyzed specific provisions of the rule, identifying unquantified burdens and benefits, as well as considering regulatory alternatives, and concluded that the rule provides an economic gain arising from enhanced clarity regarding the rules of the section 45Q credit within the context of the intent and purpose of the statute. IRS projected that this clarity will encourage additional investment in carbon oxide utilization projects relative to the no-action baseline. IRS stated that it has not estimated this gain because no data or models are readily available to predict (i) the interpretations that taxpayers might have made in the absence of this guidance, and (ii) the effect of such guidance on the investment that taxpayers would make, relative to the alternative regulatory approaches or the no-action baseline.

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

IRS certified that the final rule would not have a significant economic impact on a substantial number of small entities.

(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 the final rule does not include any federal mandate that may result in expenditures in any one year by state, local, or tribal governments, or by the private sector in excess of \$154 million (\$100 million adjusted for inflation).

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

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

On June 2, 2020, IRS published a proposed rule. 85 Fed. Reg. 34050. IRS held a public hearing on the proposed rule on August 26, 2020. IRS received comments responding to the proposed rule and addressed them in the final rule.

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

IRS determined that the final rule contains information collection requirements (ICRs) subject to PRA and submitted them to the Office of Management and Budget (OMB) for approval. The ICR is entitled Form 8933, Carbon Oxide Sequestration Credit (OMB Control Numbers 1545-0123 and 1545-2132). According to IRS, the aggregated burden estimates provided under these OMB control numbers represent a total estimated burden time, including all other related forms and schedules for corporations, of 3.344 billion hours and total estimated monetized cost of \$61.558 billion. IRS stated that no burden estimates specific to this final rule are currently available.

Statutory authorization for the rule

IRS promulgated this final rule pursuant to sections 45Q(h), 45Q(f)(2), 45Q(f)(4), 45Q(f)(5), and 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this final rule was designated as economically significant under the Order by OMB.

Executive Order No. 13132 (Federalism)

IRS determined that this final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law under the Order.