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November 7, 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: Advanced Manufacturing Investment Credit Rules under Sections 48D and 50*

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 "Advanced Manufacturing Investment Credit Rules under Sections 48D and 50" (RIN: 1545-BQ54). We received the rule on October 22, 2024. It was published in the *Federal Register* on October 23, 2024. 89 Fed. Reg. 84732. The effective date of the rule is December 23, 2024.

This rule implements the advanced manufacturing investment credit established by the CHIPS Act of 2022 to incentivize the manufacture of semiconductors and semiconductor manufacturing equipment within the United States. The rule provides the eligibility requirements for the credit and a special 10-year credit recapture rule that applies if there is a significant transaction involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern. According to IRS, the rule affects taxpayers that claim the advanced manufacturing investment credit.

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: Kalle Wardlow
Federal Register Liaison
Internal Revenue Service

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
“ADVANCED MANUFACTURING INVESTMENT CREDIT RULES
UNDER SECTIONS 48D AND 50”
(RIN: 1545-BQ54)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury, Internal Revenue Service (IRS) indicated it prepared an analysis of the costs and benefits of this rule. However, we identified no such analysis in the rule.

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

IRS stated that Treasury and IRS determined that this rule will not have a significant economic impact on a substantial number of small entities. See 89 Fed. Reg. 84750.

(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 89 Fed. Reg. 84750.

(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.

In its submission to us, IRS indicated 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 March 23, 2023, Treasury and IRS published a proposed rule. 88 Fed. Reg. 17451. IRS stated that they received comments from various interested parties. See 89 Fed. Reg. 84734. IRS responded to comments in the rule. *Id.*

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

IRS determined that this rule contains no new information collection requirements under the Act. 89 Fed. Reg. 84750.

Statutory authorization for the rule

IRS promulgated this rule pursuant to 26 U.S.C. §§ 50(a)(3)(C), 50(a)(6), and 7805.

Executive Order No. 12866 (Regulatory Planning and Review)

According to IRS, tax regulatory actions are not subject to the Order and therefore a regulatory impact assessment is not required.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. See 89 Fed. Reg. 84750.