



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

B-336826

November 12, 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 Production 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) titled “Advanced Manufacturing Production Credit” (RIN: 1545-BQ85). We received the rule on October 28, 2024. It was published in the *Federal Register* on October 28, 2024. 89 Fed. Reg. 85798. The stated effective date of the rule is December 27, 2024.

According to IRS, this rule concerns the advanced manufacturing production credit established by the Inflation Reduction Act of 2022 to incentivize the production of eligible components within the United States. See *generally*, Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 13502, 136 Stat. 1968 (Aug. 16, 2022). IRS stated that eligible components include certain solar energy components, wind energy components, inverters, qualifying battery components, and applicable critical minerals. IRS also stated that the rule addresses specific recordkeeping and reporting requirements. IRS stated further that the rule affects eligible taxpayers who produce and sell eligible components and intend to claim the benefit of an advanced manufacturing production credit, including by making elective payment or credit transfer elections.

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). This rule was published in the *Federal Register* on October 28, 2024. 89 Fed. Reg. 85798. As of the date of this report, the *Congressional Record* does not indicate when the House and Senate received the rule. However, IRS provided proof of delivery to both Houses of Congress on October 31, 2024. Email from *Federal Register* Liaison, IRS, to Senior Attorney, GAO, Subject: RE: [EXT] RE: CRA Submission: TD 10010

(GAO), (Nov. 5, 2024). The stated effect date of the rule is December 27, 2024. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

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, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Regina Johnson  
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  
TITLED  
“ADVANCED MANUFACTURING PRODUCTION CREDIT”  
(RIN: 1545-BQ85)

(i) Cost-benefit analysis

The Department of the Treasury, Internal Revenue Service (IRS) prepared an analysis of the impact of this rule. According to IRS, the rule outlines how taxpayers can claim the tax credit provided under section 45X of title 26 of the Internal Revenue Code (section 45X). IRS stated that taxpayers who claim the section 45X credit will have administrative costs related to reading and understanding the rule as well as recordkeeping and reporting requirements. 89 Fed. Reg. 85830–85831 (Oct. 28, 2024).

(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 a significant economic impact on substantial numbers of small entities and prepared a Final Regulatory Flexibility Analysis. 89 Fed. Reg. at 85830.

(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. 89 Fed. Reg. at 85831.

(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 or in its submission to us.

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

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

On December 15, 2023, IRS issued a proposed rule. 88 Fed. Reg. 86844. IRS stated that it received 193 comments from various interested parties. 89 Fed. Reg. at 85800. IRS responded to comments in the rule. 89 Fed. Reg. at 85800–85829.

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

IRS determined that this rule contains information collection requirements under the Act. 89 Fed. Reg. at 85829.

Statutory authorization for the rule

IRS promulgated this rule pursuant to sections 45X, 1502, 6001, 6417, 6418, and 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

According to IRS, the tax regulatory actions it issues are not subject to the requirements of the Order. 89. Fed. Reg. at 85829.

Executive Order No. 13132 (Federalism)

IRS determined that this rule does not have federalism implications. 89 Fed. Reg. at 85831.