



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

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February 3, 2020

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Office of Investment Security: Provisions Pertaining to Certain Investments in the United States by Foreign Persons*

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 (Treasury), Office of Investment Security entitled “Provisions Pertaining to Certain Investments in the United States by Foreign Persons” (RIN: 1505-AC64). We received the rule on January 17, 2020. It was published in the *Federal Register* as final rule; and interim rule with request for comments on January 17, 2020. 85 Fed. Reg. 3112. The effective date of both the final and interim rule is February 13, 2020.

The final rule revises regulations that implement certain provisions of section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Pub. L. No. 115-232, div. 8, title XVII, subtitle A., 132 Stat. 1636, 2173 (2018). The rule incorporates the Committee on Foreign Investments in the United States’ jurisdiction over certain non-controlling “other investments.” According to Treasury, the final rule also seeks to provide clarity to the business and investment communities with respect to the types of businesses that are covered under “other investment” authority. The final rule also amends several definitions. The interim rule adds a new definition for the term “principal place of business.”

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). Treasury found good cause to waive the 60-day delay because the provisions of FIRRMA the final rule implements will become effective on February 13, 2020, regardless of whether the rule is published and effective. According to

Treasury, without the processes, procedures, and definitions provided by the rule as directed by FIRRMA, market participants will face substantial hardship, delay, and expense in complying with the requirements of FIRRMA.

Enclosed is our assessment of the Treasury Department'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen
Senior Legal Advisor for Regulatory Affairs
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,
OFFICE OF INVESTMENT SECURITY
ENTITLED
“PROVISIONS PERTAINING TO CERTAIN INVESTMENTS
IN THE UNITED STATES BY FOREIGN PERSONS”
(RIN: 1505-AC64)

(i) Cost-benefit analysis

In its submission to us, the Department of the Treasury (Treasury), Office of Investment Security indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

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

Treasury certified the rule will 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

Treasury did not discuss the Act in the final rule.

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

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

On September 24, 2019, Treasury published a proposed rule. 84 Fed. Reg. 50174. Treasury received a number of written comments and responded to them in the final rule. Treasury also hosted a public teleconference call to discuss the proposed rule on September 27, 2019. Treasury is holding a comment period for the interim rule, which closes February 18, 2020.

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

Treasury determined the final rule contained information collection requirements (ICRs) subject to the Act. Treasury submitted the ICRs to the Office of Management and Budget (OMB) for review. The ICRs in this final rule are associated with OMB Control Number 1505-0121.

Statutory authorization for the rule

Treasury promulgated the rule pursuant to section 4565 of title 50, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

Treasury determined the final rule was not subject to the Order because the rule relates to a foreign affairs function of the United States and also is not subject to review by OMB under the April 11, 2018, Memorandum of Agreement between Treasury and OMB.

Executive Order No. 13,132 (Federalism)

Treasury did not discuss the Order in the final rule.