March 25, 2025

The Honorable Scott Bessent
Secretary of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Regulatory Review of Section 48D Final Regulations

Dear Secretary Bessent:

The undersigned companies write to request that you review and amend one narrow but important element of the Advanced Manufacturing Investment Tax Credit under Section 48D of the Internal Revenue Code ("Section 48D"), a final rule issued at the end of the Biden Administration, which addresses eligibility of manufacturing projects for semiconductor materials essential to the semiconductor ecosystem.[1] That regulation, while appropriate in other respects, requires either modification to the eligibility criteria under the definition of "semiconductor manufacturing equipment" or specific interpretative guidance to ensure American semiconductor materials manufacturing projects essential to U.S. supply chain security and resilience can leverage the investment tax credit made available under 48D in line with congressional intent.

This regulatory reform initiative is imperative to address an error made by the previous Administration. Revising the final rule is consistent with law and policy of the Trump Administration and is appropriate for consideration under Executive Order 14219 and preexisting presidential policy requiring agencies to review and modify regulations that undermine the national interest in an effort "to increase American prosperity" and improve U.S. national security.[2] We urge the U.S. Department of Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") to swiftly act on this issue and modify the final rule to ensure American leadership over other nations in semiconductor manufacturing.

I. Current Implementation of the 48D Regulations as Applied to Materials Manufacturing Projects.

The Treasury Department and the IRS issued Final Rules and guidance implementing Section 48D on October 23, 2024, during the final months of the Biden Administration. In so doing, the Biden Administration adopted an improperly narrow view as to eligibility of the credit that excludes vital elements of the domestic semiconductor supply chain. Specifically, the agencies concluded that facilities that manufacture "consumable materials, chemicals, or gases" do not

[1] Advanced Manufacturing Investment Credit Rules Under Sections 48D and 50, 89 Fed. Reg. 84732 (Oct. 23, 2024) (hereinafter "Final Rules").
[2] *See* Executive Order 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative, 90 Fed. Reg. 10583, February 19, 2025 (available here); *see also* Initial Rescissions of Harmful Executive Orders and Actions," January 20, 2025 (available here).

meet the definition of "semiconductor manufacturing equipment."[3] This conclusion runs contrary to the purpose of the statute and Congress' goals underlying the law.

Congress passed the CHIPS Act to support the semiconductor ecosystem in a wholistic manner. It did so by including a competitive grant program in Section 103, available to "semiconductors, materials used to manufacture semiconductors, or semiconductor manufacturing equipment"[4] and the corresponding investment tax credit in Section 107. The Final Rules, however, failed to establish a definition for 48D eligibility consistent with Section 103. Specifically, the Final Rules defined "the manufacturing of semiconductors or semiconductor manufacturing equipment" to exclude manufacturing facilities that manufacture critical products integral and essential to supporting semiconductor manufacturing. This is true under the final regulations even if such manufacturing facilities are primarily or exclusively serving semiconductor manufacturing activities.

As a result, material manufacturing facilities essential to the manufacture of semiconductors, semiconductor equipment and even upstream processes critical to the semiconductor ecosystem are unable to take advantage of Section 48D and thus less likely to invest in new or expanded domestic facilities.

II. The Previous Administration's Decision is Contrary to Congressional Intent, and U.S. Economic and National Security.

This result runs contrary to the statute and requires resolution, since the CHIPS Act provides flexibility to include materials suppliers as within scope of the primary purposes test in 48D. The credit applies to "any advanced manufacturing facility," which is defined as "a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment." Neither the CHIPS Act nor the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 defines "semiconductor," "semiconductor manufacturing," or "semiconductor manufacturing equipment."[5] Congress could have, but chose not to, define these terms and expressly exclude suppliers from Section 48D. Instead, the law gives the Executive Branch authority to define these terms in line with Congress' expectations and the policy goals Congress sought to address.

By excluding materials manufacturing facilities in the Final Rules, the Biden Administration acted contrary to Congress' intent in the CHIPS Act – despite multiple attempts by Congress to persuade the previous Administration otherwise. For instance: six Democratic Senators – all whom supported the CHIPS Act – instructed then Secretary Yellen in November, 2022 that it was imperative to "implement guidance for the tax credits" in a matter reflecting "a fulsome view of the semiconductor production and essential value chain."[6] They were clear that materials "production activities upstream and downstream of the actual point of fabrication" required

[3] 89 Fed. Reg. at 84739.
[4] P.L. No: 117-167.
[5] P.L. No: 117-167; P.L. No: 116-283.
[6] *See* Letter from Senators Kelly (D-AZ), Peters (D-MI), Tester (D-MT), Warnock (D-GA), Gillibrand (D-NY), and Sinema (I-AZ), November 10, 2022 ("it is important that the Department of Commerce and the Department of the Treasury take a fulsome view of the semiconductor production and essential value chain when making grant awards and developing implementation guidance for tax credits") (see Exhibit 1).

incentives under the credit.[7] These CHIPS Act authors made it very clear that exclusion of materials projects would undermine Congress's intent under the law:

> It has been the intent of Congress that activities such as the manufacture of tools, wafers, photomasks, specialty chemical, substrates for advanced packaging, and other critical parts of the production chain are eligible for consideration both for grants and tax benefits. To use a narrow reading of the text to exclude a critical activity in the production chain would be to create supply bottlenecks and potentially significant delays in producing the semiconductor device.[8]

This sentiment is also bipartisan. Senators Marsha Blackburn (R-TN), Michael Bennet (D-CO) led a letter in April, 2023 in response to the original notice of proposed rulemaking which fell short of their expectations regarding credit eligibility for materials manufacturing facilities. They and their colleagues urged the Treasury Department to maximize the eligibility scope of the 48D credit "so that facilities throughout the industry—including companies that sell directly to semiconductor manufacturers and companies whose products are integrated into semiconductor manufacturing—can take full advantage of the credit."[9] The Administration's repeated failures to adhere to congressional direction ultimately led Senators Blackburn, Tillis, Bennet and Coons to respond by introducing legislation on December 20, 2024.[10] That legislation, the Strengthening Essential Manufacturing and Industrial (SEMI) Investment Act (S. 5604) would clarify the law, address the previous Administration's error, and secure the semiconductor supply chain in line with Congress's original CHIPS Act intent.[11]

The Biden Administration's approach leaves America's supply chain vulnerable. Without semiconductor materials – including chemicals, polymers, cleaning solutions, ceramics, polysilicon, filters, purifiers, tubing, vessels, lithographic materials, solvents, film precursors, dielectrics, adhesives, substrates, and optical materials – semiconductor fabrication facilities and equipment cannot produce the most advanced or most needed semiconductors. These inputs must be produced domestically to avoid relying on foreign adversaries or foreign locations that could pose vulnerabilities to U.S. semiconductor manufacturing if disruptions occur in the region.

The Section 48D investment tax credit is also "critical to making semiconductor manufacturing in the U.S. more competitive with overseas locations that have attracted semiconductor

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[7] *Id.*
[8] *Id.*
[9] *See* Letter from Senators Bennet (D-CO), Hickenlooper (D-CO), Blackburn (D-TN), Casey, Jr. (D-PA), Cantwell (D-WA), and Kelly (D-AZ), April 20, 2023 (Exhibit 2).
[10] *See* S. 5604, December 20, 2024, https://www.congress.gov/bill/118th-congress/senate-bill/5604/text?s=2&r=1&q=%7B%22search%22%3A%22%5C%22Strengthening+Essential+Manufacturing+and+Industrial%5C%22%22%7D.
[11] U.S. Senator Marsha Blackburn, *Blackburn, Bennet, Tillis, Coons Introduce Bill to Strengthen Domestic Semiconductor Supply Chains* (December 20, 2024), https://www.blackburn.senate.gov/2024/12/issues/jobs-and-economy/blackburn-bennet-tillis-coons-introduce-bill-to-strengthen-domestic-semiconductor-supply-chains ("Congress passed the CHIPS Act to support our entire domestic semiconductor supply chain," said Senator Tillis. "It is crucial for our national security and economic resilience that we get this policy right and I am proud to cosponsor this legislation to ensure we reduce our reliance on our adversaries like China").

investment."[12] Indeed, many jurisdictions around the world – including Korea, Japan, Taiwan and the European Union –adopted robust incentive packages to stimulate and onshore manufacturing across the entire semiconductor supply chain, including materials projects, following the U.S. Government's adoption of the CHIPS Act. Their actions illustrate the fierce global competition to attract materials manufacturing investment close to home-based chip fabrication facilities. They understand that in a competitive market where cost of manufacturing is a major factor driving global siting decisions – and tax incentives are a differentiation point that can make or break an investment win. If the U.S. government fails to keep pace with our trading partners' incentives, and align 48D implementation with Trump Administration objectives, many of these projects may be built overseas and not in the Unites States.

III. President Trump's Regulatory Reform Orders Require a Narrow Modification of the 48D Final Rules.

Our request falls directly within the scope of the Executive Order 14219, which requires agencies to "initiate a process to review all regulations subject to their sole or joint jurisdiction for consistency with law and Administration policy" within 60 days of the EO's publication in the federal record, and then take steps to modify such regulations as appropriate.[13] This instruction requires your agencies to identify regulations or elements of regulations based on the criteria below, among others:

> "(iii) regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;
>
> (iv) regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
>
> (v) regulations that impose significant costs upon private parties that are not outweighed by public benefits;
>
> (vi) regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives."[14]

Modification of the 48D Final Rules implicates all of these criteria. First, the 48D guidance regarding applicability of the credit towards materials projects do not represent the best reading of the statute or Congress' intent informing it. As discussed in the previous section, the previous Administration's conclusion runs directly contrary to Congress' objectives. Second, the request we see seek implicates important matters of political and economic significance – since without access to Section 48D, many worthy semiconductor materials supply chain projects may not be

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[12] *See* Letter from Roger F. Wicker & Mark Kelly, Members, U.S. Senate, to Gina M. Raimondo, Sec'y of Com., U.S. Dep't of Com. (Feb. 24, 2023), https://www.kelly.senate.gov/wp-content/uploads/2023/02/Sec.-Raimondo-Letter-RE-CHIPS-Implementation-FINAL.pdf.
[13] Exec. Order 14219, 90 Fed. Reg. at 10483, Sec. 2(a)(d).
[14] *Id*. at Sec. 2(a)

built in the U.S. that otherwise might. This will leave critical supply chain resiliency gaps and expose the U.S. to undue national security risk. Third, by failing to properly interpret Congress' intent, the previous Administration's Final Rules put U.S. materials manufacturers at a distinct disadvantage to others in the semiconductor value chain. Without access to the credit, these manufacturers are subject to 25 percent higher costs from others in our industry. Those costs are already disincentivizing U.S. investment and providing foreign governments a critical advantage in the global race to secure semiconductor supply chains.

Finally, for all of the reasons stated above, the Final Rules' application to materials projects is already harming the national interest by significantly and unjustifiably impeding technological innovation and infrastructure development for materials projects in the U.S.[15] Inability to secure clear guidance regarding applicability of the 48D credit has led to a slow-down in manufacturing for critical projects essential to the semiconductor fabrication supply chain. As leaders in this space who plan around our customers' needs, we cannot address capacity needs without a clear and unambiguous signal from the U.S. government that the credit should apply.[16]

For these reasons, we urge you to make a limited modification to the Final Rules to expand the definition of "semiconductor manufacturing equipment" to include materials, which is consistent with Trump Administration policies discussed above, and from the First Trump Administration.

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The Trump Administration, through the Department of Treasury and IRS, can make a positive and lasting impact on CHIPS Act implementation and prevent suppliers from moving or expanding overseas by amending Section 48D eligibility as described above. In doing so, the Administration can ensure American materials manufacturers can leverage 48D of the tax code, consistent with statutory intent, to incentivize building, expanding, equipping and modernizing facilities to onshore critical capabilities required by the semiconductor ecosystem. Doing so strengthen America's national and economic security interests through a broader domestic semiconductor supply chain consistent with Congress's intent in passing the CHIPS Act.

Thank you in advance for your consideration. Please let us know if you have questions.

Sincerely,

[15] *See* McKinsey Co., Semiconductor fabs: Construction Challenges in the United States, January 27, 2023 (available here).

[16] While Executive Order 14219 applies directly in this scenario, the Department and Service can also take action pursuant to Executive Order 13789, *Identifying and Reducing Tax Regulatory Burdens*, adopted during President Trump's First Administration. That Order instructed the Treasury Department to address tax regulatory burden to identify all regulations that: (i) impose an undue financial burden on United States taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service. The policy objectives underlying that Order, which remains in place and was never withdrawn during the Biden Administration, remain just as relevant today as in April, 2017.

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