

SUPPORTING STATEMENT
U.S. Department of Commerce
National Institute of Standards and Technology
CHIPS Expansion Clawback Information Collection
OMB Control No. 0693-XXXX

SUPPORTING STATEMENT PART A

Abstract

The CHIPS Act (the Act) established a manufacturing incentives program to sustain and reestablish U.S. leadership across the semiconductor supply chain. To ensure that funding provided through the CHIPS program does not directly or indirectly benefit foreign countries of concern, the Act includes certain limitations on beneficiaries, such as restricting engagement in any significant transaction involving the material expansion of semiconductor manufacturing capacity in foreign countries of concern and prohibiting certain joint research or technology licensing efforts with foreign entities of concern. The Department of Commerce (Commerce) is issuing, a proposed rule to set forth terms related to these limitations and procedures for a benefiting entity to notify the Secretary of any planned significant transactions that may be prohibited. This information collection will be utilized as an information collection set forth in the proposed rule.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

This collection of information in the proposed rule is based on a statutory requirement. The CHIPS Act (15 USC 4652) established a program in the Department of Commerce (NIST) that provides Federal financial assistance to businesses and other entities to incentivize investments in the United States for production of semiconductors and related materials and equipment. To protect U.S. national security interests and the resiliency of critical supply chains, ***the Act requires entities receiving such Federal assistance to enter into an agreement with the Secretary of Commerce that specifies that for a period of ten years, they will not engage in transactions involving the material expansion of semiconductor manufacturing capacity in the People's Republic of China, or any other foreign country of concern.*** The Act provides for exceptions to this general prohibition, which allow for certain capacity expansions of (1) existing facilities involving manufacture of legacy semiconductors (i.e., semiconductors produced using mature technology that would not threaten national security) and for (2) manufacture of legacy semiconductors which will be incorporated into products that will be predominately sold and used within the market of the foreign country of concern.

The Act requires entities receiving CHIPS incentives (funding recipients) to notify the Secretary of Commerce of any planned transactions involving the material expansion of semiconductor manufacturing the People’s Republic of China or any other foreign country of capacity in concern. This notification requirement is the basis for the information collection requirement in this proposed rule. The funding recipient planning a significant transaction will be required to submit basic information on the proposed transaction, including the manufacturing capacity and technology proposed for the expansion and/or the end markets for which the facility will provide semiconductors. The proposed rule lays out the procedure for these notifications and the information that must be included in them.

Once notifications are received, per the Act, the Secretary of Commerce then has 90 days in which to determine whether the proposed transaction would be a violation of the Agreement entered into by the funding recipient with the Secretary, or if it meets the criteria of one of the exceptions. Violations of the agreement may result in full recovery of Federal financial assistance provided. A statutory provision allows for CHIPS funding recipients to provide “tangible proof” within 45 days of being notified that a planned transaction would be a violation that the planned transaction has ceased or been abandoned and provides opportunity for mitigation.

The pertinent section of the CHIPS Act, called “Expansion Clawback,” is attached.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Funding Recipients will be informed of their responsibility to seek the Department’s approval before undertaking any expansion of semiconductor manufacturing capacity in a foreign country of concern at the time they are given CHIPS funding (as a condition of receiving funding). They will also be informed of the process for requesting this approval, which is by submitting the information specified in this ICR to the notifications@chips.gov address. It will then be their responsibility to submit the notification if they plan any such transaction. As we explained in the NPRM, we expect few funding recipients to seek to expand capacity in a foreign country of concern, and therefore few notifications are expected.

The information to be collected will be used by the Secretary of Commerce/CHIPS Program Office to evaluate proposed significant transactions involving expansions by CHIPS funding recipients to semiconductor manufacturing capacity in foreign countries of concern to determine the impact on national security and/or whether the transactions meet the criteria of one of the exceptions to the general prohibition on expansion of semiconductor manufacturing in a foreign country of concern. The information needed to make this determination includes details on the specific semiconductor production technology involved in the proposed transaction and in some cases, the final market to be served. This is a newly established program and a new information collection requirement.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

NIST is proposing that the required information on proposed transactions involving the expansion of semiconductor manufacturing capacity in a foreign country of concern be submitted electronically to a designated dedicated email address. No specific form has been developed; rather a list of information that must be included in notifications is provided, which allows for flexibility.

Those entities effected by the information collection requirement will not need any additional equipment other than what is used commonly in office communications.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The requirement for this CHIPS NPRM is similar in nature to requirements outlined by the Department's Bureau of Industry and Security to obtain authorization for transactions involving exports of controlled goods and technologies to foreign countries of concern under the Export Administration Regulations. To the extent possible, for consistency, NIST has considered and harmonized the technology levels subject to the notification requirements with BIS control levels (as called for in the Act). However, there are a number of reasons why the information submitted to BIS for export licensing purposes would not and could not satisfy the notification requirements in the Expansion Clawback section of the CHIPS Act.

- (1) Even though both programs are administered by agencies within the Department of Commerce, there are strict protections that hinder sharing of sensitive business information, even within the Department.
- (2) The CHIPS Act established a "legacy" technology level for logic semiconductors (28 nm) that would not trigger a BIS export license requirement (14/16 nm).
- (3) Semiconductor-related technology levels used as export control parameters are independently established and subject to revision through an interagency and international process. What semiconductors are considered "legacy" semiconductors for the purposes of the Expansion Clawback are also subject to regular revision (per the Statute, reassessed every two years), and may diverge further from export control levels in the future.
- (4) Some factors needed to determine whether a transaction qualifies as exception to the Expansion Clawback, such as the final market/end customers and production capacity levels are not necessarily relevant for export licensing decisions.
- (5) Since CHIPS Incentives are available for foreign-owned entities, some transactions may fall outside of BIS jurisdiction.
- (6) Proposed significant transactions by CHIPS funding recipients would likely require review by the Secretary of Commerce early in their planning stages, while BIS export

license authorization would not be sought until later in the process, when capital/equipment expenditures are made.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection is not expected to have significant impact on small businesses. While small entities may qualify for and receive CHIPS incentive awards, they are not likely to engage in the types of transactions for which notification requirements apply. Semiconductor manufacturing is exceedingly complex and capital-intensive industry that is dominated by large multinational firms.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

As indicated, this notification requirement is established by Statute and is meant to protect U.S. national security interests by limiting expansion of semiconductor manufacturing in foreign countries of concern to legacy-level technology. If CHIPS funding recipients are not required to notify the Department of transactions involving in the expansion of semiconductor manufacturing capacity in China or another foreign country of concern, the Secretary or her designee would not have the ability to evaluate transactions to determine their impact on national security or eligibility for one of the exceptions for legacy semiconductor technology. The notification process ensures that the Secretary has a full understanding of the activities of CHIPS incentive recipients related to semiconductor manufacturing in foreign countries of concern.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner: requiring respondents to report information to the agency more often than quarterly; requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; requiring respondents to submit more than an original and two copies of any document; requiring respondents to retain records, other than health, medical, government contract; grant-in-aid, or tax records, for more than three years; in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; requiring the use of a statistical data classification that has not been reviewed and approved by OMB; that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are

consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

This information collection is not an ongoing requirement; it only applies on a one-time basis for each case of planned transactions by CHIPS funding recipients involving the expansion of semiconductor manufacturing capacity in a foreign country of concern. This is expected to be an infrequent occurrence. CHIPS incentives recipients that do engage in such transactions will be required to retain records for more than three years, but this record retention requirement is associated with a government contract. The information collection may involve confidential or sensitive business information; NIST has established rigorous data security policies to protect this information. In addition, the CHIPS Act provides that information submitted under this notification requirement will be exempt from disclosure under section 552(b)(3) of Title 5 and will not be made public (except for any administrative or judicial action or proceeding).

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Federal Register Notice containing the Notice of Proposed Rule Making was published on Thursday, March 23, 2023, Vol. 88, No. 56, pages 17439-14450) and solicits public comments on both the potential impact of the prohibitions on and exceptions to expansions of semiconductor manufacturing capacity in foreign countries of concern (based on how key terms in the prohibition are to be defined), as well as on the information collection/notification requirement for planned transactions.

NIST anticipates that public comments received on the proposed rule will provide useful information on the number of organizations potentially affected by the prohibitions and exceptions to prohibitions on significant transactions involving the material expansion of semiconductor manufacturing capacity in a foreign country of concern, as well as on the time and effort that will be required for the Secretarial notification requirement.

NIST consulted with numerous other government agencies regarding this proposed rule, including the notification requirement. In addition, an earlier NIST-issued RFI posed general questions about the expansion prohibition and clawback of federal funding to be implemented by

this proposed rule [Docket Number 21006–0213] but did not specifically address the information collection requirement/Secretarial notification.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

Not applicable – no gifts or payments will be made in connection with this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

Information in this system is not maintained in a Privacy Act system of records (i.e., information about an individual is not retrieved by the individual’s name or unique identifier) and a SORN and Privacy Act Statement are not required.

In accordance with the privacy provisions of the E-Government Act of 2002, a privacy impact assessment is required for this information system. The information will be maintained in NIST’s 188-01, Platform Services Division system. The system’s PIA is viewable at <https://osec.doc.gov/opog/privacy/NIST-pias.html>.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This information collection involves solely business information and does not involve any questions of a sensitive personal nature.

12. Provide estimates of the hour burden of the collection of information.

	<u>Number of Respondents</u>	<u>Number of responses annually / respondent</u>	<u>Total annual responses</u>	<u>Estimated hours per response</u>	<u>Total Annual Burden Hours</u>
Clawback Information Collection	10	1	10	2 hours	20

Public responses to the request for comments on the proposed rule will enable NIST to more precisely estimate burden hours. However, there are very few organizations that are in the business of semiconductor manufacturing; an unknown number of these will be recipients of CHIPS Act funding. Of those, only a few may have current or future plans to expand semiconductor manufacturing capacity in a foreign country of concern thus would be required to submit information to the Secretary regarding their planned transactions. Therefore, the population of entities that will be impacted by the information collection requirement will be small (approximately 10).

In the case of proposed expansion of capacity to produce legacy semiconductor at existing facilities (the first exception to the prohibition), the information that is required to be provided by funding recipients would be readily known to them (e.g., basic identification of parties, manufacturing capacity, and technology level related to the transaction – see list below). Therefore, the burden of complying with this proposed rule’s notification requirements in these cases limited to the time required to gathering information that is already extant in the organization, compiling it, and presenting it in a document to be emailed to NIST, and is estimated on average to be 2 hours. Specifically, the information to be provided through the notification process in these cases includes:

- (a) The funding recipient and any affiliate that is party to the transaction, including for each a primary point of contact, telephone number, and email address.
- (b) The identity and location(s) of all other parties to the transaction.
- (c) Information, including organizational chart(s), on the ownership structure of parties to the transactions.
- (d) A description of any other significant foreign involvement, e.g., through financing, in the transaction.
- (e) The name(s) and location(s) of any entity in a foreign country of concern where or at which semiconductor manufacturing capacity may be materially expanded by the transaction.
- (f) A description of the transaction, including the specific types of semiconductors currently produced at the facility planned for expansion, the current production technology node (or equivalent information) on production technology in current use and semiconductor manufacturing capacity, as well as the specific types of semiconductors planned for manufacture, the planned production technology node, and planned semiconductor manufacturing capacity.
- (g) If the transaction involves the material expansion of semiconductor manufacturing capacity that produces legacy semiconductors which will predominately serve the market

of a foreign country of concern, provide documentation as to where the final products incorporating the legacy semiconductors are to be used or consumed, including the percent of semiconductor manufacturing capacity or percent of sales revenue that will be accounted for by use or consumption of the final goods in the foreign country of concern.

- (h) If applicable, a statement explaining how the transaction meets the requirements, set forth in 15 U.S.C. 4652(a)(6)(C)(ii), for an exception to the prohibition on significant transactions that involve the material expansion of semiconductor manufacturing capacity, including details on the calculations for semiconductor manufacturing capacity and/or sales revenue by the market in which the final goods will be consumed.

The information to be collected to document the end markets for the legacy semiconductors to be produced would take more effort and time to determine, as semiconductors are an intermediate product sold for incorporation by other businesses into final products. Thus, the semiconductor manufacturer may not have full visibility into the final markets for its semiconductors. To reduce supply chain vulnerabilities, it is the intent of the CHIPS Act to discourage production of semiconductors in foreign countries of concern (such as China) that will be incorporated into products that will be exported to the United States or other countries. Since semiconductors produced in China are often incorporated into products which are then exported, **there are expected to be few if any funding recipients that will seek to utilize this exception.** The burden estimate for those entities seeking this type of capacity expansion is two hours.

More than one form is not needed.

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

The information provided through this notification process will be reviewed and analyzed by CHIPS Policy Office staff. They will determine, based on the information provided by the benefiting entity, whether the proposed significant transaction is in the national interest and meets the criteria of one of the exceptions to the general prohibition on expansions of semiconductor manufacturing capacity in a foreign country of concern.

The estimated number of notifications per year is 10, and it is estimated that each notification would require 20 hours of review by each of four federal officials at the level of GS-14. On an annualized basis the cost would be 10 notifications * 20 hours for review * 4 employees * an average hourly wage based on a mid-level GS-14 (\$137, including benefits). The total estimated cost would be approximately \$110,000.

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.

This is a new information collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

At this time, there are no in-depth statistical analyses being conducted at this time and no plans for publication of in-depth statistical data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The expiration date will be clearly displayed with the OMB Control Number.

18. Explain each exception to the topics of the certification statement identified in "Certification or Paperwork Reduction Act Submissions."

There will be no exceptions to the certification statement and NIST certifies compliance with 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).

