



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

B-336334

May 22, 2024

The Honorable Maria Cantwell  
Chair  
The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Frank Lucas  
Chairman  
The Honorable Zoe Lofgren  
Ranking Member  
Committee on Science, Space, and Technology  
House of Representatives

Subject: *Department of Commerce, National Institute of Standards and Technology: Preventing the Improper Use of CHIPS Act Funding*

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 Commerce, National Institute of Standards and Technology (NIST) entitled "Preventing the Improper Use of CHIPS Act Funding" (RIN: 0693-AB70). We received the rule on May 7, 2024. It was published in the *Federal Register* as a final rule on September 25, 2023. 88 Fed. Reg. 65600. The stated effective date of the rule is November 24, 2023.

According to NIST, this final rule implements conditions in the CHIPS and Science Act of 2022, Pub. L. No. 117-167, 136 Stat. 1372 (Aug. 9, 2022), that seek to prevent funding provided through the program from being used to directly or indirectly benefit foreign countries of concern. NIST stated that the rule defines terms related to these conditions, describes the types of activities that are prohibited, and details procedures for notifying the Secretary of Commerce of non-compliance and the process by which the Secretary will enforce these provisions.

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 rule was published in the *Federal Register* on September 25, 2023. 88 Fed. Reg. 65600. The rule was received by both the House and Senate on May 7, 2024. Email from Senior Counsel, Department of Commerce, to CRA Rules, GAO, Subject: *RE: Commerce CHIPS CRA Notice* (May 7, 2024). The rule has a stated effective date of November 24, 2023. Therefore, the stated effective date is less than 60 days from the date of receipt by Congress.

Enclosed is our assessment of NIST'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 style with a large, stylized 'S' and 'J'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: John Dermody  
Associate Chief Counsel  
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF COMMERCE,  
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY  
ENTITLED  
“PREVENTING THE IMPROPER USE OF CHIPS ACT FUNDING”  
(RIN: 0693-AB70)

(i) Cost-benefit analysis

In its submission to us, the Department of Commerce, National Institute of Standards and Technology (NIST) 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

NIST certified that this final rule will not have a significant economic impact on a substantial number of small entities. According to NIST, the factual basis for this determination was published in the proposed rule. NIST stated that no comments were received regarding the certification, and NIST has not received any new information that would affect its determination. As a result, NIST determined that a final regulatory flexibility analysis was not required.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

This final rule did not discuss the Unfunded Mandates Reform Act of 1995. In its submission to us, NIST indicated that it considered preparation of a written statement under section 202 of the Act to be not applicable.

(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.

NIST did not discuss the Act in this final rule. In its submission to us, NIST indicated the Act does not apply 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, NIST published a proposed rule. 88 Fed. Reg. 17439. NIST received 27 comments from industry and trade associations, multinational semiconductor companies and companies in related industries, individuals, a law firm, a union, a foreign government, and one anonymous commenter. NIST responded to comments within the scope of this rulemaking in its final rule.

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

NIST determined that this final rule contains information collection requirements (ICRs) under PRA. NIST stated that it will be submitting an ICR request to OMB titled “Information Required from CHIPS Act Covered Entities Regarding Proposed Expansions of Semiconductor Manufacturing Capacity in Foreign Countries of Concern”. According to NIST, the ICR will be associated with OMB Control Number 0693-0096. NIST estimated the ICR will have a total burden of 20 hours (accounting for 10 respondents and 2 hours per response) and a total burden cost of \$110,000.

Statutory authorization for the rule

NIST promulgated this final rule pursuant to sections 4651–4659 of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

NIST stated that OMB determined that this rule is significant under the Order. According to NIST, a detailed regulatory impact assessment was published in the proposed rule. No public comments were received regarding the impact assessment, and substantive portions of the impact assessment were included in the final rule.

Executive Order No. 13132 (Federalism)

NIST determined that the proposed rule does not contain policies with federalism implications as that term is defined by the Order.