
From: McQuade, Virginia (Federal) [VMcquade@doc.gov]
Sent: 4/17/2023 12:19:01 PM
To: Schmidt, Michael R. (Fed) [michael.r.schmidt@chips.gov]; Grom, JD (Federal) [JDGrom@doc.gov]
Subject: Re: CHIPS Requirements

Perfect! Thank you

Ginny McQuade
U.S. Department of Commerce
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M: 2027176745

From: Schmidt, Michael R. (Fed) <michael.r.schmidt@chips.gov>
Sent: Monday, April 17, 2023 8:04:49 AM
To: McQuade, Virginia (Federal) <VMcquade@doc.gov>; Grom, JD (Federal) <JDGrom@doc.gov>
Subject: RE: CHIPS Requirements

Ginny, really sorry for the delay here. See below:

Version 1:

b(5) - DP

CHIPS Requirements:

b(5) - DP

From: Schmidt, Michael R. (Fed)
Sent: Thursday, April 6, 2023 3:48 PM
To: Mcquade, Virginia (Federal) <VMcquade@doc.gov>; Grom, JD (Federal) <JDGrom@doc.gov>
Subject: RE: CHIPS Requirements

I can take a crack – thanks Ginny.

From: Mcquade, Virginia (Federal) <VMcquade@doc.gov>
Sent: Thursday, April 6, 2023 3:37 PM
To: Schmidt, Michael R. (Fed) <michael.r.schmidt@chips.gov>; Grom, JD (Federal) <JDGrom@doc.gov>
Subject: RE: CHIPS Requirements

Hey J.D. and Mike,
SGR asked that you revise her original note. She wants a short paragraph that will tell a story about CHIPS requirements that she can eventually use in the press. Let me know if that makes sense.

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Thanks,
Ginny

CHIPS Requirements:

b(5) - DP

From: Schmidt, Michael R. (Fed) <michael.r.schmidt@chips.gov>

Sent: Wednesday, April 5, 2023 10:27 PM

To: Mcquade, Virginia (Federal) <VMcquade@doc.gov>; Grom, JD (Federal) <JDGrom@doc.gov>; Gina Raimondo <gmr50@doc.gov>

Subject: RE: CHIPS Requirements

To add onto JD's excellent overview – see below for some additional notes. Secretary, the most notable statutory requirement missing from your list was probably Davis Bacon. On administrative preferences, I would also add our provisions on climate/environment. In addition, there are preferences for community investment and supplier diversity, but each of those have clear links to the statute as well (as described below).

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Statutory Requirements/Provisions (in CHIPS Act):

- National security guardrails
- Workforce plan
- Workforce partnerships (they need to “secure commitments from regional educational and training entities and institutions of higher education to provide workforce training”)
- Davis Bacon / prevailing wage
- Applicants must “make commitments to worker and community investment, including through training and education benefits and programs to expand employment opportunity for economically disadvantaged individuals. ”
- Small business provisions:
 - DOC must “Assign personnel to focus on increasing the participation of and outreach to economically disadvantaged individuals, minority-owned businesses, veteran-owned businesses, and women-owned businesses...”
 - “It is the sense of Congress that the Secretary shall allocate funds in a manner that promotes the inclusion of economically disadvantaged individuals and small businesses”
- Can't use CHIPS funds for buybacks or dividends

Statutory Requirements/Provisions (not in CHIPS Act):

- NEPA
- Other environmental: Clean Air Act, Clean Water Act, etc etc.
- State local permitting

Administrative requirements

- Upside-sharing (note there is a waiver provision) for applicants seeking over \$150m
- Participation in NSTC (we say applicants “should commit” to participating)
- Requirements that applicants submit plans/information associated with preferences (e.g. child care, buy America)

Administrative Preferences

- Commit to investing in US and refrain from buybacks
- As part of workforce plan:
 - Sector-based partnerships
 - Good jobs principles, wrap-around services, etc.
 - Child care (plan required as part of workforce plan)

- (Note that we require consultation with stakeholders, including unions, as part of the workforce plan as well)
- PLAs
- Supplier diversity plan (connected to statutory directive to support small and minority-owned, women-owned, and veteran-owned small businesses)
- Climate / environment
- Buy America – preference for domestically sourced steel, iron, and construction materials

From: Mcquade, Virginia (Federal) <VMcquade@doc.gov>

Sent: Wednesday, April 5, 2023 9:15 PM

To: Grom, JD (Federal) <JDGrom@doc.gov>; Schmidt, Michael R. (Fed) <michael.r.schmidt@chips.gov>; Gina Raimondo <gmr50@doc.gov>

Subject: CHIPS Requirements

Thanks J.D. +SGR to review when we land

From: Grom, JD (Federal) <JDGrom@doc.gov>

Sent: Wednesday, April 5, 2023 6:14 PM

To: Mcquade, Virginia (Federal) <VMcquade@doc.gov>; Schmidt, Michael <michael.r.schmidt@chips.gov>

Cc: Mcquade, Virginia (Federal) <VMcquade@doc.gov>

Subject: Re: This is GMR from VM computer.

We require companies who receive over \$150 M to

- Give us a plan on how they will provide access to childcare (this is not a preference, it is a requirement for the companies to submit a plan)
- In general do upside sharing.

NEPA is required by NEPA, not CHIPS. NEPA does not appear in the CHIPS authorizing language. Requirement for a workforce plan, creation of a function focused on opportunity and inclusion, guardrails, export controls, restrictions on joint technology efforts, no abuse of our funds including using for stock buybacks/dividends, and clawbacks, etc are explicit in the statute.

Both are tied to the statute. See description of the statutory tie below; however, I would not recommend you b(5) - DP b(5) - DP in your hearing.

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More background:

Statutory authority on requirement for child care plan:

- The Department has the authority to require a child care plan. That authority is based in the many statutory provisions that require the Department to ensure that projects will have the workforce they need and to have programs to ensure opportunity for economically disadvantaged individuals. The child care plan requirement seeks to ensure that these requirements are met.
 - The eligibility requirements of Section 9902 of the CHIPS Act require that the applicant demonstrate that it has made:
 - “commitments to worker and community investment,” including through commitments to “training and education benefits paid by the covered entity” and “programs to expand employment opportunity for economically disadvantaged individuals”; and has
 - “a strategy to meet such workforce needs consistent with [these] commitments.”

- o Further, it is the sense of Congress that funds should be allocated in a way that supports job creation, bolsters the semiconductor workforce and promotes the inclusion of economically disadvantaged individuals.
- o In substance, these provisions authorize the Department to ensure that applicant's demonstrate adequate commitments to workers and sufficient strategies to meet workforce needs, with an emphasis on activities that promote the inclusion of economically disadvantaged individuals. The Department has the authority to elaborate on how these requirements should be met. For projects of sufficient size, the Department has determined that a plan for child care should be required to ensure that the workforce needs of facility are met and that the goal of including economically disadvantaged individuals is met.

Statutory authority on requirement for upside sharing:

- Section 9909 of the CHIPS Act authorizes upside sharing. Specifically, Section 9909(a)(3) of the CHIPS Act states that "in carrying out [its] responsibilities" under the CHIPS Act, the Department may "require a person or other entity to make payments to the Department . . . as a condition for receiving support through an award of assistance." Upside sharing falls within this authority.
 - o It will be a condition in the award that requires a payment to the Department. The condition will be set forth in the agreement. It will be triggered if project returns exceed the specified threshold. And the triggering of the condition will require a payment to the Department.
 - o Upside sharing also is part of the Department carrying out the responsibilities under the CHIPS Act. Upside sharing protects the taxpayer, which is certainly a responsibility of the Department under the Act. The Department is also specifically tasked under the CHIPS Act, in Section 9902(a)(3), with "determin[ing] the appropriate amount" of funding for each project. Upside sharing is a tool to determine the appropriate amount of funding.
- Section 9909(b) also notes that the payments received as a condition of an award should be returned to the CHIPS for America fund administered by the Department. That is an authorization to receive these payments and reuse them for CHIPS Act purposes.

From: Mcquade, Virginia (Federal) <VMcquade@doc.gov>

Sent: Wednesday, April 5, 2023 8:58 PM

To: Grom, JD (Federal) <JDGrom@doc.gov>; Schmidt, Michael <michael.r.schmidt@chips.gov>

Cc: Mcquade, Virginia (Federal) <VMcquade@doc.gov>

Subject: This is GMR from VM computer.

CHIPS Requirements:

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Is the above essentially correct?

THx

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