

# SEMICONDUCTOR INDUSTRY INFORMATION MEMO

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## Commerce Department Publishes Proposed National Security Guardrails for CHIPS Act

The U.S. Department of Commerce (DOC) released a Notice of Proposed Rulemaking detailing their plan for national security guardrails aimed at preventing CHIPS funding from being used by adversaries to the U.S. or its allies. The Notice of Proposed Rulemaking will be published in the Federal Register on March 23, 2023.

The DOC's proposed rule provides additional details and definitions for the guardrails that were included in the CHIPS and Science Act. Those guardrails include prohibitions on the use of CHIPS funding in other countries, restrictions on certain foreign investments by funding recipients in semiconductor manufacturing for 10 years, as well as limitations on joint research or technology licensing relating to products that raise national security concerns by funding recipients and foreign countries of concern.

The proposed rule:

1. Establishes standards restricting the expansion of advanced manufacturing in foreign countries of concern.

The proposed rule prohibits recipients from participating in significant transactions that involve the material expansion of leading-edge and advanced manufacturing facilities in foreign countries of concern for a period of 10 years from the date on which the recipient receives their award.

The proposed rule defines a significant transaction as a transaction in excess of \$100,000, and a material expansion as a 5% or greater increase to the manufacturers existing capacity.

2. Limits the expansion of legacy facilities in foreign countries of concern.

The expansion of legacy facilities, which are already in operation and produce older chip models, are also limited under the proposed rule. The proposed rule limits funding recipients from adding production lines or expanding a legacy facilities production capacity beyond 10%. The proposed rule does allow for the construction of new legacy facilities, so long as 85% of the facilities output is incorporated into final products that are consumed in the country in which they are produced. The proposed rule also requires notice be made to the Department of State prior to the expansion or construction of any legacy facility.

3. Details restrictions on joint research and licensing with foreign entities of concern.

The proposed rule defines a joint research effort as any research and development undertaken by two or more persons, and technology licensing as an agreement to make patents, trade secrets or know-how available to another party. The proposed rule also expands the definition of foreign entities of concern beyond those initially outlined in the CHIPS Act to include entities from various governmental lists.

4. Classifies certain semiconductors as critical to national security.

While the proposed rule allows for the expansion of legacy chip production if certain requirements are met, it also creates a distinction between certain types of chips, classifying certain semiconductors that may otherwise qualify as legacy chips as critical to national security, and thus subjecting them to additional requirements. A list of chips that are classified as critical to national security was developed in consultation with the Department of Defense and U.S. Intelligence Community and includes current-generation and mature-node chips used for quantum computing, in high radiation environments and for other military capabilities.

5. Reinforces U.S. export controls.

The proposed rule reinforces prior export controls on semiconductors created by the DOC's Bureau of Industry and Security to prevent the People's Republic of China from purchasing chips that could enhance their military capabilities. The proposed rule aligns the thresholds or prohibited technology between export controls and CHIPS national security guardrails.

If you have any questions about the information presented in this memo, please contact [Brian Butler](#), [Jared Joyce](#), any attorney in Bond's [semiconductor industry group](#) or the Bond attorney with whom you are in regular contact.

