

FINAL NATIONAL SECURITY GUARDRAILS FOR CHIPS FOR AMERICA INCENTIVES PROGRAM RELEASED

Guardrails Finalized by the Department of Commerce Will Ensure Manufacturing and Technology Investments Under the CHIPS Act Bolster Technological and National Security of America, Allies, and Partners

The U.S. Department of Commerce recently released the final rule implementing the national security guardrails of the bipartisan CHIPS and Science Act. The rule elaborates on two core provisions of the statute: the first, prohibiting CHIPS funds recipients from expanding material semiconductor manufacturing capacity in foreign countries of concern for ten years; and the second, restricting recipients from certain joint research or technology licensing efforts with foreign entities of concern.

The rule will help ensure CHIPS investments enhance global supply chain resilience in coordination with allies and partners. The CHIPS and Science Act is part of President Biden's Investing in America agenda for unleashing a manufacturing and innovation boom, driving U.S. competitiveness, and strengthening economic and national security.

This final rule follows careful consideration of comments submitted in response to the proposed rule, which was published in March 2023. The Department reviewed and incorporated suggestions from stakeholders, including representatives of the domestic and

foreign semiconductor industry, academia, labor organizations, trade associations, and others in developing this rule. The rule offers details and definitions on national security measures applicable to the CHIPS Incentives Program, including limiting funding recipients from expanding semiconductor manufacturing in foreign countries of concern.

The bipartisan CHIPS and Science Act included clear guardrails to strengthen national security. The statute: Prohibits recipients of CHIPS incentives funds from using the funds to construct, modify, or improve a semiconductor facility outside of the United States;

Restricts recipients of CHIPS incentives funds from investing in most semiconductor manufacturing in foreign countries of concern for 10 years after the date of award; and,

Limits recipients of CHIPS incentives funds from engaging in certain joint research or technology licensing efforts with a foreign entity of concern that relates to a technology or product that raises national security concerns.

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NATIONAL SECURITY GUARDRAILS FOR CHIPS

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If these guardrails are violated, the Department can claw back the entire federal financial assistance award. This final rule provides details on and definitions for these national security guardrails. In particular, the rule:

Establishes Standards to Restrict Expansion of Advanced Facilities in Foreign Countries of Concern: The statute prohibits the material expansion of semiconductor manufacturing capacity for leading-edge and advanced facilities in foreign countries of concern for 10 years from the date of award. In addition to front-end and back-end processes, the rule clarifies that wafer production is included within the definition of semiconductor manufacturing. The final rule ties expanded semiconductor manufacturing capacity to the addition of cleanroom or other physical space and defines material expansion as increasing a facility's production capacity by more than five percent. This threshold is intended to capture even modest transactions to expand manufacturing capacity but allows funding recipients to maintain their existing facilities through normal course-of-business equipment upgrades and efficiency improvements.

Limits the Expansion of Legacy Facilities in Foreign Countries of Concern: The statute places limits on the

expansion and new construction of legacy facilities in foreign countries of concern. The rule provides details regarding this restriction, prohibiting recipients from adding new cleanroom space or production lines that result in expanding a facility's production capacity beyond 10 percent. The rule establishes a notification process for recipients that have plans to expand legacy chip facilities so the Department can confirm compliance with the national security guardrails.

Classifies Semiconductors as Critical to National Security: While the statute allows companies to expand production of legacy chips in foreign countries of concern in limited circumstances, today's rule classifies a list of semiconductors as critical to national security, thereby subjecting them to tighter restrictions. This designation covers chips that have unique properties that are critical to U.S. national security needs, including current-generation and mature-node chips used for quantum computing, in radiation-intensive environments, and for other specialized military capabilities. This list of semiconductor chips was developed in consultation with the Department of Defense and U.S. Intelligence Community.

Details Restrictions on Joint Research and Technology Licensing Efforts with

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Foreign Entities of Concern: The statute restricts covered entities from engaging in joint research or technology licensing with a foreign entity of concern that relates to a technology or product that raises national security concerns. Foreign entities of concern include those owned or controlled by foreign countries of concern, those on the Bureau of Industry and Security (BIS) Entity List and Treasury Department's Chinese Military-Industrial Complex Companies (NS-CMIC) list, and others as outlined in the statute. This restriction does not apply to several types of engagements which are necessary to existing operations and do not threaten national security, such as activities related to international standards, involving patent licensing, and to enable funding recipients to utilize foundry and packaging services.

International Coordination with U.S Partners and Allies

The Department appreciates the extensive input and cooperation from U.S. partners and allies while developing this rule. The Department will continue coordinating with international allies and partners to support a healthy global semiconductor ecosystem that drives innovation and is resilient to cybersecurity threats, natural disasters, pandemics, geopolitical conflict, and more. As semiconductors and technologies continue to evolve, the United States will work with allies and partners and develop coordinated strategies to

protect our collective economic and national security.

As the Department has been implementing the CHIPS and Science Act, it has remained in close contact with U.S. partners and allies, including through engagements with the Republic of Korea, Japan, India and the United Kingdom, and through the Indo-Pacific Economic Framework, European Union-United States Trade and Technology Council and North American Semiconductor Conference. The Department will continue coordinating closely with the U.S. partners and allies to advance these shared goals, advance our collective security, and strengthen global supply chains.

About CHIPS for America: CHIPS for America is part of President Biden's economic plan to invest in America, stimulate private sector investment, create good-paying jobs, make more in the United States, and revitalize communities left behind. CHIPS for America includes the CHIPS Program Office, responsible for manufacturing incentives, and the CHIPS Research and Development Office, responsible for R&D programs, that both sit within the National Institute of Standards and Technology (NIST) at the Department of Commerce. NIST promotes U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. NIST is uniquely positioned to successfully administer the CHIPS for America program because of the bureau's strong relationships with U.S. industries, its deep understanding of the semiconductor ecosystem, and its reputation as fair and trusted. Visit <https://www.chips.gov> to learn more.



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