

September 9, 2020

Cordell Hull, Acting Under Secretary
Matthew Borman, Deputy Assistant Secretary
Bureau of Industry and Security (BIS)
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Request to Create Mechanism to File Non-Public Comments on Foundational Technologies

Dear Mr. Hull and Mr. Borman:

As you know, on August 27, 2020, BIS published an Advanced Notice of Proposed Rulemaking (ANPRM) seeking public comment on the definition of, and criteria for, identifying foundational technologies. Unlike other Commerce notices and a recent BIS notice, the ANPRM did not include a mechanism for interested stakeholders to submit confidential comments in response to the questions raised in the ANPRM. Specifically, in BIS's "Request for Comments on Future Extensions of Temporary General License," BIS included the following:

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC." Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page. The corresponding non-confidential version of those comments must be clearly marked "PUBLIC." The file name of the non-confidential version should begin with the character "P." The "BC" and "P" should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a "BC" or "P" will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

85 Fed. Reg. 17300 (Mar. 27, 2020).

On behalf of the Semiconductor Industry Association (SIA), I am writing to respectfully request that BIS create and announce well in advance of the 60-day comment period deadline such a mechanism for the foundational technologies ANPRM.

As was the case for the ANPRM on Emerging Technologies, some of our member companies have indicated that they are reluctant or unlikely to submit comments responsive to some of the ANPRM's questions because doing so would include the disclosure of competitive information that is confidential or business proprietary. In order to enable BIS to receive all information responsive to the questions asked in the notice, we respectfully request BIS create a process that would allow for the submission of comments that include confidential information – both for this ANPRM and for any proposed rules pertaining to emerging or foundational technologies.

Thank you for your consideration of the request. Creating such a mechanism for non-public comments will ensure BIS receives a greater amount of high-quality comments, allowing BIS to properly tailor new foundational technology controls.

Sincerely,

Erik Pederson
Director, Government Affairs