

# PRATT'S GOVERNMENT CONTRACTING LAW REPORT

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## Biden Administration Continues Taking Action to Strengthen U.S. Supply Chains

*By Jamieson L. Greer, Christine E. Savage, Christopher Hyner, and Adam Harper\**

*The authors of this article discuss federal agency requests for information from the public to support U.S. supply chains.*

The Department of Commerce's Bureau of Industry and Security ("BIS") and the Department of Transportation ("DoT") are requesting information and comments from the public to help the agencies secure and strengthen America's supply chains. By participating in these efforts, companies have an opportunity to shape these agencies' supply chain policies in a way that solves business challenges and garners government support.

The requests relate to President Biden's Executive Order on America's Supply Chains (the "America's Supply Chains E.O." or the "E.O."), issued on February 24, 2021, which directs federal agency action to secure and strengthen America's supply chains.<sup>1</sup> The E.O. ordered two key assessments:

- (1) Reports regarding critical supply chains (i.e., semiconductor manufacturing and advanced packaging; large capacity batteries; critical minerals and materials; and pharmaceuticals and active pharmaceutical ingredients ("APIs")) that were due 100 days after the E.O. was issued ("100-Day Reports"); and
- (2) Reports regarding sector-specific supply chains ("Sector Reports") that are expected to be published early in 2022.

The following discussion summarizes the most recent requests for information from BIS and DoT that BIS will use to address the ongoing semiconductor shortage and that BIS and DoT will use for their respective Sector Reports.

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<sup>1</sup> See, Executive Order on America's Supply Chains, at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/executive-order-on-americas-supply-chains/>.

## **BIS REQUESTS INFORMATION CONCERNING SEMICONDUCTOR SHORTAGE**

On September 24, 2021, following on its 100-Day Report for semiconductors, BIS issued a Federal Register notice<sup>2</sup> (“Semiconductor Notice”) seeking information from parties in the semiconductor product supply chain, including from domestic and foreign semiconductor design firms, semiconductor manufacturers, materials and equipment suppliers, and semiconductor intermediate and end-users. BIS included specific questions in the Semiconductor Notice designed to assess the ongoing semiconductor shortage, including potential causes and recommended changes to bolster the supply chain.

The Semiconductor Notice states that the purpose of obtaining the requested information is to accelerate “information flow across the various segments of the supply chain, identifying data gaps and bottlenecks in the supply chain, and potential inconsistent demand signals.” By participating in this information-gathering effort, businesses can also advocate for their desired policy outcomes and help create a regulatory environment that accounts for unique aspects of their business models and goals.

BIS requires commentors to use a specific form for their comments, which is available on BIS’s website. Interested parties had until November 8, 2021, to submit comments. Comments submitted to BIS in response to the Semiconductor Notice that contain business confidential information (“BCI”) will not be disclosed to the public. Commentors had to provide a non-confidential version of their submission to be disclosed to the public.

Importantly, the Secretary of Commerce, Gina Raimondo, stated that the U.S. government expects companies to submit comments and, if voluntary responses are not forthcoming, that the U.S. government may invoke the Defense Production Act to require companies to submit the requested information on a mandatory basis.<sup>3</sup>

## **BIS ALSO REQUESTS COMMENTS FOR THE ICT SECTOR REPORT**

On September 20, 2021, BIS also issued a Federal Register notice<sup>4</sup> (“ICT Notice”) requesting comments from the public to help BIS produce its Sector Report on the information and communication technology (“ICT”) industrial

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<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2021-09-24/pdf/2021-20348.pdf>.

<sup>3</sup> See “White House Weighs Invoking Defense Law to Get Chip Data,” Bloomberg (Sept. 23, 2021), *available at* <https://www.bloomberg.com/news/articles/2021-09-23/white-house-weighs-invoking-defense-law-to-get-chip-supply-data>.

<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-2021-09-20/pdf/2021-20229.pdf>.

base (the “ICT Sector Report”). For purposes of the ICT Sector Report, the scope of the ICT industrial base consists of the following:

- Hardware that enables terrestrial distribution, broadcast/wireless transport, satellite support, data storage to include data center and cloud technologies, and end user devices including home devices such as routers, antennae and receivers, and mobile devices;
- “Critical” software (as defined by the National Institute of Standards and Technology in relation to Executive Order 14028); and
- Services that have direct dependencies on one or more of the enabling hardware.

Players in the ICT space should consider how they might contribute to this effort to help ensure that policy outcomes are nuanced and effective. Interested parties had until November 4, 2021, to submit comments. As for the Semiconductor Notice, BIS will not publicly disclose comments containing BCI submitted in response to the ICT Notice, but commentors had to provide a non-confidential version of their submission to be disclosed to the public.

### **DOT REQUESTS COMMENTS FOR TRANSPORTATION SECTOR REPORT**

On September 16, 2021, DoT similarly issued a Federal Register notice<sup>5</sup> (“Transportation Notice”) requesting comments from the public to help DoT produce its Sector Report focusing on the current and future challenges to supply chain resilience in the freight and logistics sector. DoT notes that it has “heard from many stakeholders about issues related to bottlenecks on highways, rail, and at ports, as well as severe container/chassis shortages and lack of adequate warehousing capacity, particularly around the nation’s largest ports.”

Interested parties had until October 18, 2021, to submit comments. Unlike the Semiconductor Notice and ICT Notice, DoT will make all comments available to the public, meaning any BCI included in the comments will be disclosed to the public.

### **CONCLUSION**

The BIS and DoT notices demonstrate that the Biden Administration is continuing to take actions to address the bipartisan concerns about the current status of key supply chains that are relevant to the national, economic, and health security of the United States.

In addition, it is expected that additional public notices will be forthcoming from other agencies responsible for preparing their own sector reports.

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<sup>5</sup> <https://www.govinfo.gov/content/pkg/FR-2021-09-16/pdf/2021-19974.pdf>.

Companies should strongly consider submitting comments in response to such notices, particularly in light of the Commerce Secretary Raimondo's recent statements recognizing that the government may even consider compelling companies to respond to the semiconductor supply chain questions. These requests provide companies with an important opportunity to address the specific supply chain challenges they are facing.