BIS TARGETS REMOTE ACCESS TO ADVANCED COMPUTING: NEW CONTROLS FOR SEMICONDUCTOR COMPANIES AND DATA CENTERS

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US Policy and Regulatory Alert

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On 16 November 2026, the US Department of Commerce's Bureau of Industry and Security (BIS) released a long-awaited interim final rule (IFR), *Addressing Remote Access to Advanced Semiconductors* (RIN 0694-AK50) intended to prevent specific foreign actors from leveraging advanced computing power based on US technology, including US Super Intelligence semiconductors. The IFR is expected to take effect upon publication on 19 November 2026:

- Establishes a new worldwide end-use control targeting remote access to advanced computing resources, chips, and chip technologies by companies headquartered in, or whose ultimate parent is headquartered in, Macau or a Country Group D:5 destination, including China;
- Imposes licensing requirements for certain advanced computing items destined for Indonesia, Malaysia, Singapore, Thailand, and Brazil and provides a mechanism for additional destinations to be designated;
- Tightens existing controls for semiconductor foundries and outsourced semiconductor assembly and test companies (OSATs); and
- Rescinds the Biden administration's AI Diffusion Rule, which BIS previously announced it would not enforce.

BIS will accept comments on the rule for 60 days after publication (through 19 January 2027, based on the scheduled November 19 publication date).

DATA CENTERS: A NEW WORLDWIDE END-USE CONTROL—EAR 744.24

The IFR breaks new regulatory ground by extending advanced-computing controls beyond the physical shipment of chips and servers to the remote provision of computing power through foreign data centers. New Section 744.24 of the Export Administration Regulations (EAR) establishes a worldwide end-use control for specified advanced computing items destined for data centers. A license is required where a party has “knowledge” that covered items are destined for a data center anywhere in the world that is providing, or will provide, access to more than 12,000,000 aggregate total processing performance (TPP) to or for a company headquartered in, or whose ultimate parent is headquartered in, Macau or a Country Group D:5 destination.

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The TPP threshold may be satisfied by computing capacity at a single data center or across “linked data centers” that share computing resources or workloads. Covered items include ECCN 3A090 items other than 3A090.c, ECCN 4A090 items, related “.z” items, and associated software and technology. BIS may also impose a license requirement by informing a party that specified items present an unacceptable risk of use in, or diversion to, the restricted data center end use.

The control reaches both direct and indirect access to computing power, including access provided through an intermediary to or for a Macau- or Country Group D:5-related company. The control can also apply after the original export, reexport, or transfer. If a foreign data center later begins using covered items to provide the restricted computing access, the owner, operator, or other party making the transfer must obtain BIS authorization. Thus, covered chips already installed at a foreign data center can become subject to a new authorization requirement if the use of their computing capacity changes.

For transactions made without authorization on or after the effective date, the exporter, reexporter, or transferor must inform the recipient that any later change to the restricted data center end use will require BIS authorization and that the recipient must follow the EAR's know-your-customer (KYC) guidance. To satisfy the requirement that an exporter does not have “knowledge”, BIS expects parties to obtain and maintain records regarding the foreign data center's KYC checks, including whether its customers are directly or indirectly owned or controlled by Macau- or Country Group D:5-related persons. If the data center cannot or will not provide sufficient information, that constitutes a red flag that the exporter must resolve before proceeding. Moreover, a reexporter or transferor with knowledge of a prohibited end use may not rely on de minimis treatment merely because a covered US-origin item has been incorporated or commingled into a foreign-made product.

Section 744.24 does not permit license exceptions unless BIS provides otherwise, and BIS will review license applications case by case. A limited exclusion is available for computing access used exclusively for a qualifying commercial recommender system, but reliance on the exclusion requires a filing with BIS. Separately, existing data centers providing the restricted computing access to Macau- or Country Group D:5-related companies before publication of the IFR must obtain a license within 90 days of the effective date to continue providing those services.

NEW LICENSE REQUIREMENT FOR FIVE COUNTRIES—EAR 742.6

The IFR also requires a license for specified advanced computing items exported, reexported, or transferred to or within Indonesia, Malaysia, Singapore, Thailand, and Brazil, destinations that the US Government assesses present an elevated diversion risk. BIS will review license applications case by case, considering the impact on US national security and foreign policy, the effectiveness of each country's export control regime, and its coordination with BIS on export enforcement.

Most license exceptions are unavailable for these transactions, although License Exception Advanced Compute Manufacturing and several other specified exceptions remain available in some circumstances. The new license requirement does not apply where the ultimate consignee or end user is headquartered in, or has an ultimate parent headquartered in, the United States, provided the applicable monthly reporting requirements in new Section 743.10 are satisfied. The required reports are due by the first business day of the following month and must identify the transaction parties and their ultimate parents; the ultimate destination and any additional end users; paragraph-level ECCN; product name and SKU; TPP; quantity; and transaction date.

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FOUNDRIES, OSATS, AND CHIP DESIGNERS—EAR 744.23 AND 774

The IFR also makes several changes to the rules that apply to chip foundries, OSATs, and chip designers. For front-end fabricators and OSATs, the IFR removes two existing ways to overcome the presumption under Note 1 to ECCN 3A090.a that certain advanced-node logic integrated circuits (ICs) are 3A090.a data center chips. The change applies where the IC designer is located in, or has an ultimate parent headquartered in, Country Groups D:1, D:4, or D:5 or one of the five newly controlled countries. In those cases, the designer generally must be approved or authorized. Because the rule looks separately at the designer's location and its ultimate parent, foundries and OSATs should re-screen their design customers on both grounds.

A new provision of Section 744.23 requires a license, regardless of destination, for exports, reexports, or transfers of an applicable advanced-node IC specified under ECCN 3A090.a for a designer that is neither approved nor authorized. The IFR also narrows the existing attestation pathways under Note 1 to ECCN 3A090.a for IC designers located in, or whose ultimate parent is headquartered in, Country Groups D:1, D:4, or D:5 or one of the five newly controlled countries. This includes the circumstances in which certain fabs and approved OSATs listed in Supplement No. 7 to Part 740 may attest to the characteristics of the finished IC.

Server Supply Chains and Rescission of the AI Diffusion Rule

After announcing in May 2025 that it would not enforce the AI Diffusion Rule and subsequently clarifying that certain preexisting advanced-computing controls remained in effect, BIS is now formally rescinding that framework while retaining targeted controls on advanced computing items.

The IFR removes the AI Diffusion Rule's country tiers, ECCN 4E091 model-weights control, and the related foreign direct product rule, as well as License Exceptions Artificial Intelligence Authorization and Low Processing Performance, and Data Center Validated End User (VEU) Authorization. The general VEU program and License Exception Advanced Compute Manufacturing remain available.

BIS retained the worldwide Advanced Computing Foreign Direct Product Rule. Under that rule, a foreign-produced ECCN 3A090 chip subject to the EAR remains subject after incorporation into a foreign-produced board, server, or other item.

KEY COMPLIANCE CONSIDERATIONS

- Companies involved in advanced computing transactions throughout the data center supply chain should assess how the IFR may affect their classification and customer-diligence procedures, particularly regarding customer ownership and control; ultimate-parent headquarters; data center end use; remote computing access; and TPP. Advanced computing and data center transactions should remain a compliance priority.
- Companies supplying specified advanced computing items to foreign data centers should consider whether existing compliance procedures are sufficient to identify changes in data center end use after delivery of the covered items, rather than limiting diligence to the time of the original export, reexport, or transfer.

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- Companies relying on the US-headquartered-company exclusion for transactions involving Indonesia, Malaysia, Singapore, Thailand, or Brazil should prepare to comply with the monthly reporting requirements under Section 743.10.
- Foundries and OSATs should re-screen IC design customers by location and ultimate-parent headquarters to confirm whether they may continue to rely on existing attestation pathways.
- IC designers should assess whether they qualify as approved or authorized IC designers and if applicable, consider the requirements for obtaining approved IC designer status.

Please contact any member of our International Trade, Investment Controls, and National Security practice group if you have questions about the IFR or would like to discuss how the new requirements may affect your business.

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