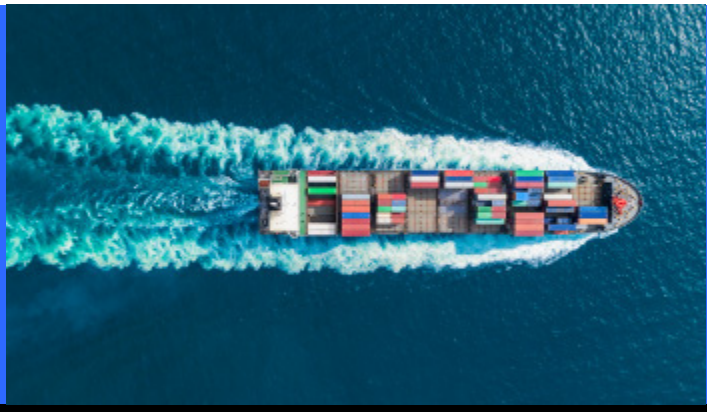
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Sanctions & Export Enforcement and International Trade Advisory & Enforcement Update

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BIS Expands Advanced Computing Controls to Address Data Center Remote Access and Third Country Diversion

The interim final rule extends U.S. advanced computing controls to address remote access to the computing power generated by controlled chips. Chip and server exporters, data center operators, cloud providers, foundries, and their investors and lenders should assess the implications for customer diligence, capacity commitments, and licensing, and not just for their operations in Southeast Asia.

On November 16, 2026, the U.S. Department of Commerce's Bureau of Industry and Security (**BIS**) released an interim final rule titled "Addressing Remote Access to Advanced Semiconductors" (the **Rule**). The Rule builds on the advanced computing controls first issued in October 2022 and elaborated thereafter by both the Biden and Trump Administrations through amendments to Export Administration Regulations (**EAR**) and BIS published guidance. Those controls have focused on the supply of advanced integrated circuits (**ICs**) and related items and included scenarios when such ICs were being procured for certain end users. Through the Rule, BIS now seeks to address arrangements by which companies headquartered in China and other "countries of concern" obtain remote access to their computing power outside of those countries.

BIS's new Rule is the first major development in U.S. export controls on advanced chips and AI[1] technologies since BIS announced it would rescind the AI Diffusion Framework (Framework) rolled out in the final days of the Biden administration. The Rule comes at a time of unprecedented public and political focus on exports of chips and remote compute access to China and only days before a major meeting between President Trump and President Xi in which the topic of AI and advanced chips is likely to be front of mind. First impressions suggest that while BIS has been developing the Rule for some time, it was ultimately rolled out in a hurry. For more than a day after an atypical late-Sunday announcement, it was unclear when exactly the Rule would be published in the Federal Register and take effect, and the first public version of the Rule contained government internal confidentiality markers. In addition, the announcement itself was unusual, with Commerce disclaiming responsibility for the substance of the Rule, stating that it was "written by and at the direction of the Department of Treasury and the National Security Council."

The Rule settles questions on several topics, but, as with most regulations, and especially those that become effective prior to an agency's consideration of public comments, leaves many more open. In this alert, we review the Rule's major changes, flagging new key risks for companies operating in the AI and data center ecosystems and highlighting outstanding unanswered questions.

At a high level, the Rule uses BIS's existing jurisdiction over advanced computing items to address remote access and diversion risks. It makes four principal changes:

- **A new data center end-use control.** New Section 744.24 restricts exports, reexports, and transfers (in-country) to overseas data centers that remotely supply significant volumes of compute to companies headquartered in, or whose ultimate parent company is headquartered in, Macau or a Country Group D:5 destination, which includes China (collectively, "covered companies").[2]
- **Destination-based licensing for five additional countries.** Previously, BIS required a license for exports of ICs for all IC exports to a subset of countries referred to as Groups D:1, D:4 and D:5, which are lists of countries detailed in the EAR. Subject to specified exclusions and license exceptions, the Rule adds a license requirement for advanced computing items exported, reexported, or transferred (in-country) to several non-Group D countries, including Indonesia, Malaysia, Singapore, Thailand, and Brazil, which BIS explains now present a high risk of diversion.
- **Tighter presumptions for foundries and packagers.** The Rule reduces the pathways by which front-end fabricators and packaging companies may treat custom logic chips as falling outside the EAR's advanced computing controls.
- **Formal rescission of the AI Diffusion Framework.** The Rule makes good on BIS's May 2025 promise to rescind the Biden-era AI framework from the EAR.

BIS's new Rule is significant in another way: BIS has clarified its interpretation of a key existing EAR provision. BIS states in the preamble to the Rule that the EAR's existing end-use control on "advanced computing items" in Section 744.23(a)(3) "is not, and has never been" limited to transactions in which a China-headquartered company is the ultimate consignee or end user. As we discuss below, BIS frames this reading as a description of existing law that we believe is likely to create potential civil penalty liability for past transactions among many participants in the

data center ecosystem given the ways in which data center transactions have evolved over the last several years.

The Rule takes effect upon publication in the Federal Register, and comments are due 60 days later. As of November 17, 2026, the public-inspection version is scheduled for publication on November 19, 2026. BIS includes in the Rule a limited savings clause allows shipments of Ics that are newly subject to a license requirement or newly losing license-exception eligibility to proceed under their previous eligibility if they were enroute aboard a carrier to a port of export, reexport, or transfer on the publication date pursuant to actual orders, and the transaction is completed within 30 days after publication. But as discussed below, this safe-harbor provision is unlikely to provide much comfort to companies newly subject to the Rule's controls.

I. BACKGROUND: THE POLICY PROBLEMS BIS SET OUT TO SOLVE

Since October 2022, BIS has pursued a "chokepoint" strategy that leverages the significant technological advantages of U.S. and allied partners in the semiconductor ecosystem to impede indigenous Chinese semiconductor development. The January 2025 AI Diffusion Framework, rolled out in the final days of the Biden administration, extended that strategy to the three inputs required to train frontier AI models—advanced Ics, computing power, and model weights—and sought to close the loophole that allowed persons in countries of concern to rent access to computing power outside their countries. The Framework accomplished this through a tiered, worldwide licensing regime based on the end-user and destination country.

BIS did not ultimately implement this tiered licensing regime, instead announcing in May 2025 that it would rescind the Framework and replace it with a "stronger but simpler" rule. After a year and a half without action by BIS, this week's Rule appears to be that replacement.

As the promised replacement, the Rule replaces the Framework's broader architecture of country tiers, compute allocations, and dedicated model-weight controls with targeted destination-based, compute thresholds that trigger licensing requirements for certain compute providers, and other end-use controls, while addressing several pathways through which BIS believes entities of concern have continued to obtain advanced computing capabilities. These pathways include:

- **Remote access.** Pre-existing shipment controls already restricted the delivery of advanced chips to companies headquartered in China, Macau, or another Country Group D:5 designee (or whose parent is headquartered in one of those jurisdictions). But those shipment controls did not expressly treat the allocation of remote computing capacity as a separately controlled transaction. As for Chinese-headquartered companies that, until now, had nonetheless been the beneficiaries of the computing power of those advanced chips, BIS states that the Rule is intended to "undermine those entities' ability to access significant volumes of advanced SI semiconductors remotely, including through connected cloud computing." Through this rule, BIS is attempting to address a fundamental underlying concern and a significant gap U.S. export controls architecture that both the Biden Administration and Trump Administration has left open until now: that remote access to large-scale compute can be used to train and run AI models capable of supporting military and intelligence activities, irrespective of where chips on which that compute is run are located.

- **Data centers built *for* Chinese customers.** A related concern are existing arrangements in which a data center in built outside of China, is nominally owned and operated by a non-Chinese party but that is, in substance, built primarily for a China-headquartered customer—for example, under an offtake or capacity reservation arrangement with that customer's local subsidiary. With this Rule, BIS states that the control in pre-existing Section 744.23(a)(3) was always intended to prevent China-headquartered entities from "setting up cloud servers or data centers in other countries" in order to continue training their AI models. But whether Section 744.23(a)(3) in fact extended to such conduct has been ambiguous until now. Through the Rule, BIS appears to be attempting to close a "loophole" in the EAR's controls on Chinese access to compute by saying it was actually closed all along.

- **Physical diversion through third countries.** BIS states that the five newly controlled destinations were selected "in response to concerns that advanced computing items subject to EAR licensing requirements are being diverted to entities and countries of concern without authorization." The addition of Singapore, Malaysia, and Thailand is consistent with a series of U.S. criminal cases brought since mid-2025, in which the Department of Justice alleged that advanced graphics processing units were routed to China through those countries.[3] BIS does not identify particular transactions or enforcement matters underlying its selection of Indonesia or Brazil, though it is possible that BIS has targeted these jurisdictions based on reports of data center construction or development by Chinese companies there.

- **Custom chips.** Finally, BIS is concerned that companies headquartered in countries subject to a license requirement can obtain advanced logic chips of their own design from foundries and packaging houses in third countries. The Rule's amendments are intended to give the U.S. Government "critical oversight over companies headquartered in certain countries that seek to leverage advanced semiconductor production capabilities in third countries."

II. REMOTE ACCESS: THE NEW DATA CENTER END-USE CONTROL (SECTION 744.24)

A. The License Requirement

New Section 744.24 prohibits the export, reexport, or transfer (in-country), without a license, of advanced computing items subject to the EAR where such supplier has "knowledge" that the item is destined for a data center, *anywhere in the world*, that is providing or will provide access to processing performance above a certain threshold to or for companies headquartered in, or whose ultimate parent company is headquartered in, China, Macau or another Country Group D:5 destination. Thus, an overseas facility may be covered by the new control even if its location ordinarily would not trigger a destination-based license requirement. We discuss the separate question of remote access provided by U.S.-located data centers in Section VII below.

Notably, Section 744.24 does not regulate the provision of remote access as such; it is an end-use control on the underlying items. Because the EAR defines a "transfer (in-country)" to include a change in the *end use* or end user of an item within the same foreign country, a data center operator that begins using controlled items in its possession to supply such companies above the threshold results in an in-country transfer requiring a license, even though the items themselves never move.

B. The 12,000,000 TPP Threshold and "Linked Data Centers"

The new data center end-use control applies to data centers providing access to more than 12,000,000 aggregate total processing performance (TPP), a metric that measures the computing power of semiconductor chips. Aggregate TPP—a term also used in the Biden-era Framework, is the sum of the total processing performance of all covered Ics or commodities in a group. BIS explains that access to computing power "at this level or greater will allow for training or running of advanced SI models." Using one GPU manufacturer's published compute specifications, the threshold is approximately equivalent to as little as 200 of its most advanced GPUs. The threshold can therefore be relevant to deployments substantially smaller than a hyperscale data center, including facilities serving a single significant covered customer.

Importantly, the threshold may be met at one data center or across "linked data centers," which the Rule defines as data centers that use networking infrastructure linking two or more separate facilities so that they may share resources, balance workloads, and replicate data as a unified whole. The definition expressly includes facilities that are digitally linked. An operator therefore cannot avoid the control by distributing a covered customer's capacity across multiple sites. Exporters and operators of individual facilities are in a more difficult position, because they often cannot see whether a customer is also drawing on capacity at other linked facilities.

C. Access "To or For" Covered Companies

The data center control reaches access provided "to or for" covered companies. BIS construes this language to include a data center that provides remote access to a customer outside Country Group D:5 that is in turn training AI models for, participating in the training of AI models for, or providing AI models to a D:5 company. The identity of the data center's direct customer is therefore not dispositive. The operative question is who ultimately benefits from the workload, which in practice may require operators to at least obtain customer representations about the parties on whose behalf they will run workloads.

D. "Knowledge" and the Diligence Presumption

The data center control turns on "knowledge," which under the EAR includes not only positive knowledge but also an awareness of a high probability that a circumstance exists or will occur, and which may be inferred from conscious disregard or willful avoidance of facts. The Rule supplements that standard with an express diligence expectation. To show that it lacks knowledge, an exporter, reexporter, or transferor is expected to obtain, and be able to provide, sufficient information from the foreign data center regarding the data center's own know-your-customer checks, including whether any data center customer is subject to direct or indirect ownership or control by persons located in, headquartered in, or whose ultimate parent is headquartered in, China, Macau or another D:5 country. A foreign data center that declines or is unable to provide that information presents a red flag that "presumptively provides you with 'knowledge'" unless the red flag is resolved before the transaction proceeds.

The provision requires exporters to conduct diligence on their customers' customers and treats a data center's failure to provide sufficient information as presumptive knowledge unless the resulting red flag is resolved. Moreover, the diligence expectation is broader than the license trigger: the license requirement turns on where a company or its ultimate parent is

headquartered, whereas the diligence expectation extends to direct or indirect ownership or control by persons merely "located in" those jurisdictions.

E. Obligations of Exporters and Data Center Operators

The Rule does not create a standalone prohibition on providing or obtaining remote access. Its prohibitions attach to exports, reexports, *and* transfers *(in-country)* of covered items, including changes in end use. As such, the compliance burden falls first on those who ship advanced computing items: chip designers, server builders, distributors, and systems integrators. Data center operators are nevertheless reached in three ways:

- **Participation in the original shipment is not required.** The prohibition applies regardless of whether the person in possession of the item was a party to the original export, reexport, or transfer (in-country).
- **A change in end use is a transfer (in-country).** As noted above, BIS states that a change from a non-prohibited end use to a prohibited end use is considered a "transfer (in-country)" that requires authorization, and that the owner or operator of the overseas data center, or other party making the transfer, will be required to obtain a license. A data center operator that lawfully received its chips, and that later proposes to serve covered companies above the threshold, would accordingly need a license before doing so, unless the commercial recommender system exclusion discussed below applies.
- **Mandatory flow-down notice.** An exporter, reexporter, or transferor that exports, reexports, or transfers covered items without authorization on or after the effective date, because it has no knowledge of a prohibited end use and no other EAR license requirement applies, must give the recipient notice. The notice must inform the recipient that BIS authorization is required if the items will be used to provide more than 12,000,000 aggregate TPP to or for covered companies. It also must state that the transferor (for example, the data center operator) must obtain that authorization, and that the transferor must follow BIS's know-your-customer guidance. Records relating to Section 744.24 must be retained.

The control also survives incorporation of controlled items into foreign-produced systems. It applies regardless of whether a U.S.-origin item has been incorporated into or commingled with a foreign-made item, and reexporters and transferors may not rely on the EAR's de minimis provisions where there is knowledge, at any point in the development, production, or use of the foreign-made item, of a prohibited end use.

F. Existing Arrangements

A data center that was providing a significant volume of compute to covered companies before the Rule's publication, and that wishes to continue doing so, must obtain a license within 90 days of the effective date "or face future export restrictions." The text requires *obtaining* a license within that period, not merely *submitting* an application, though BIS may clarify that a timely application suffices or extend the period. In practice, today, license applications with a China nexus are rarely processed within that time frame. Regardless, companies should not treat this provision as a general grace period for new transactions or as relief from preexisting license requirements.

G. Exclusion for Commercial Recommender Systems

The prohibitions in Section 744.24 do not apply where computing power access is provided only for a "commercial recommender system," provided that a submission is made to BIS identifying the covered company, the aggregate TPP provided to or for that company, and the diligence performed to ensure that access is provided exclusively for that purpose. The submission is shared with the End-User Review Committee. The exclusion is narrow—a commercial recommender system must be exclusively designed and exclusively used to rank, filter, or suggest commercial products, services, or content, and the term excludes any system designed or used to generate novel text, image, audio, video, software, or other content in response to user inputs, as well as any system that incorporates such a model, even if the system also performs recommendation functions. The exclusion appears to apply only to the data center end-use control at Section 744.24.

H. Licensing Policy and "Is Informed" Notices

Section 744.24 generally provides no license-exception relief and specifies case-by-case review of license applications. BIS may also inform persons, individually or through an amendment to the EAR, that a license is required for specified items to certain persons or destinations because of an unacceptable risk of use in, or diversion to, the prohibited end use. The Secretary of State or the Assistant to the President for National Security Affairs may also notify the Secretary of Commerce that a destination is at high risk of use in, or diversion to, the prohibited end use, in which case the Secretary of Commerce is to act within 10 days of receipt, if he deems it appropriate, by informing persons that a license is required for specified items to that destination.

I. Direct Controls on Remote Access May Follow

The Rule's current reliance on exports, reexports, and in-country transfer transactions in the Rule to regulate remote access reflects the statutory authority granted to the Department of Commerce by the Export Control Reform Act of 2018 (**ECRA**). Specifically, ECRA does not grant BIS authority to regulate *remote access* to an item. Historically, in published advisory opinions that date back to the late 2000s and early 2010s, BIS distinguished exports from the provision of computing capacity, and many have construed these advisory opinions to suggest that the provision of computing capacity alone does not constitute an export. Perhaps for this reason, the Rule ties controls to underlying items and their end use and are arguably consistent with BIS's understanding that it can impose controls based on the use of items that are being exported, reexported, or transferred.

The Remote Access Security Act (H.R. 2683, RASA) attempts to rectify this legislative shortcoming in the ECRA. RASA, which passed the House of Representatives on January 12, 2026, and was referred to the Senate the following day, would give BIS express authority to regulate remote access itself. If enacted and implemented, that authority could support direct licensing, conditions, and reporting obligations for remote access even without an export, reexport, or transfer (in-country). The practical scope would depend on BIS's implementation.

III. DATA CENTERS BUILT FOR CHINESE CUSTOMERS: BIS'S READING OF "FOR" IN SECTION 744.23(a)(3)

The October 2023 advanced computing rule introduced, in Section 744.23(a)(3), a license requirement for advanced computing items destined to locations outside Country Groups D:1, D:4, and D:5 (with destinations also in Country Group A:5 or A:6 remaining within scope) "for" an entity that is headquartered in, or whose ultimate parent company is headquartered in, Macau or a D:5 destination. The now rescinded AI Diffusion Framework moved that requirement into its worldwide license requirement in Section 742.6. With the worldwide requirement now rescinded, the Rule returns it to Section 744.23(a)(3)(i)(A) as a conforming change.

When this license requirement was first created, BIS expressly illustrated its understanding of the control to reach PRC-headquartered cloud or data server provider located outside those country groups. In the Rule's preamble, BIS further elaborates on the word "for," addressing an important question about the control's reach. BIS states that the control "is not, and has never been limited only to exports, reexports, and transfers (in-country) destined to such entities of concern as ultimate consignees or end users, but extends to exports, reexports, or transfers (in-country) on behalf of these entities of concern, e.g., if an entity of concern was the purchaser in the transaction (directly or indirectly) or was the exclusive or primary (greater than 50 percent of total compute) remote end user of the data center computing capacity." In practical terms, *BIS will look past the identity of the party that owns and operates a data center*. A facility owned by a local operator in a third country but procured at the instance of a China-headquartered company or dedicated principally to that company's use, is in BIS's view a facility "for" that company. Three points merit particular attention:

- **BIS presents this interpretation as existing law.** Because BIS describes the provision as never having been limited to ultimate consignees and end users, the statement is not confined to future transactions. BIS adds that any entities in violation of the requirement "should submit a voluntary self-disclosure." Parties that have supplied advanced computing items to third-country data centers since the 2023 controls took effect, with knowledge that a covered company was the purchaser or the primary remote user, should assess their exposure promptly, while considering what would be potential defenses to any enforcement action given the prior ambiguity of the provision's reach. Exposure is likely greatest for facilities built or supplied with a specific PRC-headquartered customer in mind; arrangements involving multi-tenant facilities developed without a specific tenant raise harder questions.

- **The 50 percent figure may not be a safe harbor.** The figure appears only in the preamble, is introduced by "e.g.," and is not reflected in the regulatory text. A data center in which a covered company uses less than half of total compute may still be "for" that company if, for example, the company was the direct or indirect purchaser of the hardware.

- **There is no volume threshold, and the licensing policy is restrictive.** Unlike Section 744.24, Section 744.23(a)(3)(i)(A) applies to any quantity of advanced computing items. A presumption of denial generally applies to covered-company transactions, but Section 744.23(d) retains specified exceptions, including favorable treatment for certain end users and items. Revised Section 742.6 also contains a presumption of denial and a

policy-priority provision. Parties should assess all applicable review standards rather than assume that one policy governs every transaction.

BIS encourages exporters, reexporters, and transferors to examine both end-use controls whenever a transaction involves a data center outside the United States and there is knowledge that a covered company will be an intended remote end user. The two controls overlap but are not coextensive:

	Section 744.23(a)(3)(i)(A)	**Section 744.24**
Trigger	Knowledge that the item is destined "for" a covered company, including on its behalf (e.g., as direct or indirect purchaser or exclusive or primary remote user)	Knowledge that the item is destined to a data center providing access to more than 12,000,000 aggregate TPP to or for covered companies
Volume threshold	None	More than 12,000,000 aggregate TPP, at one data center or across linked data centers
Destination scope	Foreign destinations outside D:1, D:4, and D:5; destinations also in A:5 or A:6 remain within scope	Any destination worldwide in the text; see Section VII regarding U.S.-located facilities
Items	Listed commodities and software (ECCNs 3A090 other than 3A090.c, 4A090, and ".z" items)	The same items, plus associated software and technology
License review	Generally, presumption of denial, subject to Section 744.23(d) exceptions and overlapping review policies	Case-by-case under Section 744.24(c); overlapping policies require separate review
End use exclusion	No equivalent exclusion; limited license exceptions may apply under Section 744.23(c)	Commercial recommender systems, subject to a BIS submission
Timing	Described by BIS as an existing requirement	Effective on publication; 90-day provision for preexisting services, subject to the qualifications above

The express red-flag presumption discussed above in Section II.d applies by its terms to Section 744.24(a)(1); the Rule does not expressly extend it to Section 744.23. The same diligence information may nevertheless be relevant under Section 744.23's general "knowledge" standard. BIS's May 2025 guidance already identifies as a red flag a customer providing infrastructure as a service (IaaS) that does not or cannot affirm that users of its services are not headquartered in the PRC. Companies should therefore assess the information under both controls, while distinguishing the express presumption in Section 744.24 from the broader knowledge inquiry.

IV. DIVERSION THROUGH THIRD COUNTRIES: DESTINATION-BASED LICENSING

A Five Newly Controlled Destinations

The Rule requires a license for exports, reexports, and transfers (in-country) of advanced computing items to or within Indonesia, Malaysia, Singapore, Thailand, and Brazil. Because the requirement extends to transfers (in-country), the resale or redeployment of hardware already located in those countries may itself require a license.

- **Exclusion for U.S.-headquartered recipients.** The license requirement does not apply to exports, reexports, and transfers (in-country) to an ultimate consignee or end user headquartered in, or whose ultimate parent company is headquartered in, the United States, provided that the exporter, reexporter, or transferor complies with a new reporting requirement in Section 743.10. The Section 743.10 Reports must identify each party to the transaction and the ultimate parents of the ultimate consignee and end user, the ultimate destination and any end users, and, for each product, the ECCN, product name and SKU, TPP, quantity, and date of export, reexport, or transfer. Reports are due monthly, no later than the first business day of the month following the transaction. Because this licensing exclusion is conditioned on reporting, a missed or deficient report places the compute provider's use of the exclusion at risk. It also relieves only the destination-based requirement: a U.S.-headquartered operator that operates facilities in one of the five countries must separately assess the end-use controls in Sections 744.23 and 744.24 when it serves covered companies.

- **Licensing policy.** The Department of Commerce will review the applications it receives on a case by case basis to determine whether the transaction is contrary to U.S. national security or foreign policy interests, taking into account the effectiveness of the destination's export control regime and its coordination with BIS on enforcement. Stronger local export controls and enforcement cooperation with the United States may therefore support more favorable licensing outcomes.

- **License exceptions.** Only a limited set of license exceptions remains available for advanced computing items destined to the five newly listed countries and the other destinations covered by Section 740.2(a)(9)(ii) (which excludes the UAE from its destination-based restriction): TMP (as limited to Section 740.9(a)(6)), NAC/ACA, RPL, GOV (as limited to Section 740.11(b)), TSU (Section 740.13(a) and (c)), HBM, and ACM. Each exception remains subject to its own item, destination, and end-use conditions; in particular, HBM concerns 3A090.c memory, which is outside the new Section 744.24 control. Companies that have relied on other exceptions for shipments to these five countries, including for servicing and replacement flows, should confirm that an exception remains available.

- **The list is not closed.** Additional countries may be designated, and BIS states that Commerce "will be actively monitoring for countries that tolerate evasion" of the Rule and will consider consequences including import restrictions, new license requirements on advanced semiconductor exports, downgrading a country's status in the U.S. export control regime, and Entity List designations and temporary export prohibitions for foreign persons involved.

B. Other Destinations

For all other destinations, the Rule replaces the Framework's worldwide license requirement with a requirement limited to destinations in Country Groups D:1, D:4, and D:5 (other than those also in Country Groups A:5 or A:6) and the United Arab Emirates, except where the ultimate consignee and all end users are approved UAE entities listed in Supplement No. 8 to Part 740 and approved to receive the particular items. We summarize the resulting regime below, subject to applicable license exceptions and other EAR requirements.

Destination or recipient	License requirement	License review policy
Indonesia, Malaysia, Singapore, Thailand, Brazil	Required, unless the ultimate consignee or end user, or its ultimate parent, is U.S.-headquartered and monthly reports are filed	Case-by-case, subject to overlapping review policies
D:5 destinations and Macau; covered companies wherever located	Generally required under destination-based or end-use controls, as applicable	Generally subject to a presumption of denial. Case-by-case review for applications for exports of commodities below 21,000 TPP and 6,500 GB/s total DRAM bandwidth to end users in China or Macau, with the information required by Supplement No. 2 to Part 748, paragraph (dd). Other applicable review standards must also be assessed.
D:1 and D:4 destinations not also in A:5 or A:6, and the UAE (subject to the D:5 and covered-company policy above)	Required; UAE exclusion applies only if the ultimate consignee and all end users are listed and	Generally subject to a presumption of approval under the residual Section 742.6 policy, subject to other applicable controls

	approved to receive the items	
All other destinations	No destination-based requirement under Section 742.6(a)(6)(iii)	Not applicable; the end-use controls in Sections 744.23 and 744.24 continue to apply

V. CUSTOM CHIPS: TIGHTER RULES FOR FOUNDRIES AND PACKAGERS

Under Note 1 to ECCN 3A090.a, a "front-end fabricator" or outsourced semiconductor assembly and test (OSAT) company that seeks to export, reexport, or transfer (in-country) an "applicable advanced logic integrated circuit" must presume that the chip is a 3A090.a item designed or marketed for data centers, unless it can overcome that presumption in one of three specified ways. The Rule makes two changes to this regime.

- *First*, new Section 744.23(a)(3)(i)(C) requires a license where a front-end fabricator or OSAT exports, reexports, or transfers (in-country), to or within any destination, an applicable advanced logic IC subject to the EAR and specified in ECCN 3A090.a that was designed by a company that is neither an approved IC designer nor an authorized IC designer. BIS explains that despite the removal of the Framework's worldwide license requirement, this provision preserves a license requirement for fabricators and packagers producing advanced ICs for such designers wherever they are located.
- *Second*, the two pathways that rely on transistor-count attestations are no longer available where the IC designer is located in, or has an ultimate parent headquartered in, a destination in Country Groups D:1, D:4, or D:5 or one of the five newly controlled destinations. For designers in those jurisdictions that are neither approved nor authorized, the presumption that the chip is a controlled 3A090.a item will stand.

Note that under a separate April 2026 rule, after December 31, 2026, an authorized IC designer must meet the specified headquarters and reporting criteria and have submitted an application to become an approved IC designer. Authorized status then expires 180 days after submission of the application. Data center operators and AI developers that rely on custom accelerators should confirm their designers' status and application timelines.

VI. FORMAL RESCISSION OF THE AI DIFFUSION FRAMEWORK

At a high level, the Rule removes the Framework's principal mechanisms from the EAR:

- **Model weight controls.** ECCN 4E091, the AI model weights foreign direct product (FDP) rule, and related provisions are removed. BIS has determined that the concerns arising from the transfer of model weights are more effectively addressed through destination-based or end-use license requirements.
- **Country tiers and associated authorizations.** License Exceptions Artificial Intelligence Authorization (AIA) and Low Processing Performance (LPP), the list of favored destinations in Supplement No. 5 to Part 740, and the Data Center Validated End-User Authorization are removed.

- **The worldwide license requirement,** as described in Section IV.B

Still, several provisions survive:

- **The advanced computing FDP rule.** BIS retains the worldwide destination scope of Section 734.9(h)'s advanced computing FDP rule and emphasizes its "expansive application." In particular, BIS states that it retains jurisdiction over a foreign-produced ECCN 3A090 IC after the IC is incorporated into another foreign-produced item such as a GPU board or server.
- **License Exception Advanced Compute Manufacturing (ACM)** under Section 28 is retained.
- **Validated End-User (VEU) Authorization** under Section 748.15 remains available for eligible listed end users and items in China and India, subject to its conditions. It does not replace the rescinded worldwide data center VEU pathway.

Companies that structured investments or capacity plans around the Framework's tiers, compute allocations, or data center VEU pathways should revisit those plans. With the removal of ECCN 4E091, the Rule removes the Framework's dedicated model-weight control; other EAR classifications and end-use or end-user restrictions may still be relevant. The Rule nevertheless reaches the training and provision of models indirectly, where the elements of Section 744.24 are met, including the computing-power threshold and knowledge requirement.

VII. UNRESOLVED ISSUES

The Rule was issued without prior notice and comment, and several provisions would benefit from further clarification. The following issues appear unresolved and are candidates for comment or requests for BIS guidance.

- **Timing and existing arrangements.** The new requirements take effect on Federal Register publication, but BIS presents its Section 744.23 interpretation as a statement of existing requirements. The 90-day provision does not explain how BIS will treat applications still pending at its expiration and should not be assumed to protect new shipments or past violations.
- **Data centers in the United States.** Although Section 744.24 refers to destinations "worldwide," remote access alone to hardware remaining in the United States does not appear to trigger an export, reexport, or transfer (in-country). Under the EAR, a "transfer (in-country)" means a change in end use or end user within the same *foreign* That conclusion assumes no separate transmission or release of controlled software or technology and does not displace other restrictions, including those on certain U.S.-person support activities. But for now, the provision of U.S.-based compute to foreign persons appears not to fall within the scope of BIS's new Rule.
- **How the threshold is measured.** The Rule does not say whether the 12,000,000 aggregate TPP is measured per covered company or across all covered companies served by a data center, whether it is measured by installed, contracted, or actually used capacity, or over what period. The operative text refers to "companies" in the plural, whereas the reporting provision for commercial recommender systems refers to the TPP provided to or for a single company.

- **Overlapping licensing policies.** Section 744.24 specifies case-by-case review, while revised Section 742.6 includes a presumption of denial for covered-company transactions and a policy-priority clause. Section 744.23(d) retains separate review standards and a cross-reference to Section 742.6(b)(10)(iii)(A)(1), which the Rule repurposes for the five newly controlled destinations. BIS should clarify the interaction of these provisions, particularly where a transaction triggers multiple controls.

- **Commercial recommender systems.** Section 744.24(b)(2) excludes commercial recommender systems from the control, subject to a submission to BIS, and sets no time limit on that exclusion. Two other passages cast doubt on whether it is permanent: the 90-day licensing provision for existing providers, which runs on from the same paragraph, and a statement in the preamble. The preamble states that data center operators providing remote access for such systems may continue for only 90 days and must then obtain a license. One reading is that the preamble statement concerns Section 744.23, which contains no such exclusion. On that reading, a data center used primarily by a covered company for recommender workloads could qualify for the Section 744.24 exclusion while still triggering Section 744.23, depending on the transaction and applicable authorization.

- **Reach of "for."** Under Section 744.24, BIS's reading reaches a non-D:5 customer that provides AI models to a D:5 company, and the Rule refers to the "training or running" of models. It is unclear how far this extends to model developers that license or serve models to Chinese customers in the ordinary course. Under Section 744.23, it is also unclear how "greater than 50 percent of total compute" is to be measured, and what conduct short of that figure qualifies.

- **Scope of required diligence.** The diligence expectation described above extends to "direct or indirect ownership or control" of a data center's customers by persons located in, headquartered in, or whose ultimate parent is headquartered in, Macau or a Country Group D:5 destination. The Rule does not set an ownership threshold, say what "control" requires, or explain how a finding of minority ownership or control bears on the license requirement, which turns on the customer's own headquarters or its ultimate parent's headquarters. The Rule also does not address nationality, so it is unclear how the expectation applies to a third-country company (for example, one in Germany) owned or controlled by D:5 or Macau individuals or entities who are not themselves located there. The preamble refers more loosely to ownership or control by "Country Group D:5 or Macau persons," which could be read more broadly than the operative text. Nor does the Rule define "headquartered." BIS says the diligence is meant to prevent circumvention "through corporate restructurings or spinoffs," which suggests it will look past formal ownership structure. Because a data center's inability to provide this information is a presumptive red flag, these gaps have practical consequences for exporters.

- **Enforceability of the Section 744.23 interpretation.** BIS presents its reading of Section 744.23(a)(3) as existing law and invites voluntary self-disclosures, but it is an open question whether that position would withstand challenge as applied to past conduct, given the ambiguity of the provision's reach before the Rule, especially in light of BIS's past published guidance on remote access arrangements in other contexts.

- **BIS' enforcement appetite.** As noted above, the announcement stated that the Rule was written by and at the direction of the Department of Treasury and the National Security Council, and Commerce disclaimed responsibility for its substance. How aggressively BIS will enforce the new controls is therefore an open question.

VIII. KEY TAKEAWAYS

The Rule replaces the Framework's broad architecture with targeted controls that impose significant diligence and implementation demands across the data center ecosystem. It asks exporters to understand who uses the computing power their products generate, and data center operators to understand who ultimately benefits from their customers' workloads. The following broad categories of affected companies could consider the steps below:

Chip, server, and systems exporters and reexporters:

- For any data center customers, update the appropriate end-use certifications and questionnaires. If a given customer refuses to provide that information, consider this a presumptive red flag and prepare a pre-approved escalation path.
- Build the Section 744.24(e) notice into sales and shipping documentation, and retain associated records.

Data center operators and cloud providers:

- Map the customer base against both the headquarters test and the broader ownership and control inquiry. Calculate aggregate TPP made available to or for covered companies, including across linked facilities. Operators relying on the transition for preexisting services should plan to obtain any required license as soon as possible within the 90-day window, assess whether the commercial recommender system exclusion is available, and review customer contracts for representations, audit rights, and suspension rights. Note that a license might not issue within the 90 days; as discussed above in Section II(f), historically speaking, few licenses with a nexus to China are processed within 90 days.

Parties with existing third-country data center arrangements:

- Parties that have supplied or received advanced computing items for third-country data centers since the 2023 controls took effect should assess whether a covered company was the direct or indirect purchaser or the primary remote user, and whether a voluntary self-disclosure is warranted.

Companies operating in or shipping to the five newly controlled destinations:

- Determine which shipments require a license under the new framework; in so doing, companies should plan for licensing lead times, confirm whether the U.S.-headquartered exclusion applies, and establish a reporting process if it does.

Foundries, packagers, and chip designers:

- Confirm whether each IC designer whose chips you fabricate or package is an approved or authorized IC designer, because Section 744.23(a)(3)(i)(C) requires a license for exports, reexports, and transfers (in-country) of advanced logic ICs specified in ECCN 3A090.a that were designed by a company that is neither. Identify any custom chip programs that depended on the transistor-count attestation pathways, which are no longer available where the designer is located in, or has an ultimate parent

headquartered in, a D:1, D:4, or D:5 destination or one of the five newly controlled destinations. After December 31, 2026, an authorized IC designer must also have applied to become an approved IC designer, and its authorized status expires 180 days after it submits that application. These application timelines should be reflected in production and licensing plans.

Investors, lenders, and acquirers:

- In conducting diligence on data center assets, determine how much of the data center's contracted capacity is committed to covered companies, whether serving those companies requires a license, and what happens to revenue if that capacity cannot lawfully be delivered.

The Rule is unlikely to be BIS's last word. BIS has reserved the ability to designate additional destinations on short notice, Congress is considering legislation that would permit direct controls on remote access, and further guidance would help companies apply several of the Rule's central concepts. Our team works daily with clients across the AI supply chain to design diligence frameworks, contractual protections, and licensing strategies that reflect BIS's evolving requirements, and we will continue to monitor developments.

[1] The Rule refers throughout to "Super Intelligence" or "SI" in place of "Artificial Intelligence" or "AI" pursuant to Executive Order 14434. For consistency with our prior alerts, we use "AI."

[2] Other D:5 destinations include Afghanistan, Belarus, Burma, the Central African Republic, the Democratic Republic of Congo, Cuba, Eritrea, Haiti, Iran, Iraq, North Korea, Lebanon, Libya, Nicaragua, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, and Zimbabwe.

[3] *See* U.S. Department of Justice, Two Chinese Nationals Arrested on Complaint Alleging they Illegally Shipped to China Sensitive Microchips Used in AI Applications (Aug. 5, 2025) (alleged shipments through Singapore and Malaysia), https://www.justice.gov/opa/pr/two-chinese-nationals-arrested-complaint-alleging-they-illegally-shipped-china-sensitive; U.S. Citizens and Chinese Nationals Arrested for Exporting Artificial Intelligence Technology to China (Nov. 20, 2025) (alleged shipments through Malaysia and Thailand), https://www.justice.gov/opa/pr/us-citizens-and-chinese-nationals-arrested-exporting-artificial-intelligence-technology.

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