Simpson Thacher

Memorandum

BIS Issues Rule Restricting Remote Access to Advanced AI Chips

November 20, 2026

On November 16, 2026, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") made available for public inspection an interim final rule entitled "Addressing Remote Access to Advanced Semiconductors" (the "IFR"), which was published in the *Federal Register* on November 19, 2026, and which expands export controls related to technology used in Super Intelligence ("SI").[1]

The IFR is designed to ensure that existing restrictions on access to advanced U.S. computing chips cannot be circumvented through remote computing arrangements, including cloud services, offered by data centers in third countries. To do that, the IFR:

1. Imposes a new license requirement on exports, reexports and transfers (in-country) of advanced computing items, including chips-related software and technology, where there is "knowledge" that the item is destined to a data center, wherever located, that is providing or will provide access to more than 12 million aggregate TPP (at one data center or through linked data centers) to or for companies headquartered in, or whose ultimate parent is headquartered in, China (including Hong Kong and Macau) or a destination specified in Country Group D:5;[2]
2. Adds a new license requirement for exports, reexports and transfers (in-country) of advanced chips and other computing items to or within Indonesia, Malaysia, Singapore, Thailand and Brazil, exports to which BIS views as presenting an unacceptable risk of diversion, with an exclusion for transactions where the ultimate consignee or end user is headquartered in, or whose ultimate parent is headquartered in, the United States, provided the exporter, reexporter or transferor complies with new monthly reporting requirements under § 743.10;
3. Purports to clarify that the existing license requirement for exports of advanced computing items "for" Chinese or other D:5-headquartered companies extends to transactions on behalf of those companies; for example, where such a company is the purchaser (directly or indirectly) or is the exclusive or primary

[1] Pursuant to Executive Order 14434, Inaugurating the Era of Super Intelligence, the IFR uses the terms "Super Intelligence" and "SI" in place of "Artificial Intelligence" and "AI."

[2] Country Group D:5 are countries subject to a U.S. arms embargo, including Afghanistan, Belarus, Burma, Central African Republic, China, Democratic Republic of Congo, Cuba, Eritrea, Haiti, Iran, Iraq, Lebanon, Nicaragua, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, and Zimbabwe. Macau is not a Country Group D:5 destination but is treated in parallel throughout the IFR.

(greater than 50 percent of total compute) remote end user of a data center's computing capacity, and encourages parties in violation to submit voluntary self-disclosures;

4. Narrows the pathways for front-end fabricators and OSATs to overcome the presumption that advanced logic integrated circuits are ECCN 3A090.a items, and adds a worldwide license requirement for their exports of such ICs designed by non-approved, non-authorized IC designers; and
5. Rescinds the Biden-era "Framework for Artificial Intelligence Diffusion."

New Export Controls on Remote Access to Advanced Chips

The IFR adds § 744.24, which prohibits any person from exporting, reexporting or transferring (in-country) covered advanced computing items, including SI chips, without a license if, at the time of the transaction, the person has "knowledge" that the item is destined to a data center, wherever located, that is providing or will provide access to more than 12 million aggregate TPP, to or for China or other D:5-headquartered companies. License applications "will be reviewed on a case-by-case basis."

No license exceptions overcome the license requirement, except as BIS may note for designated destinations. A carve-out does exist for "commercial recommender system" end-use, defined as an SI tool "exclusively designed and exclusively used to rank, filter, or suggest commercial products, services, or content to users based on user behavior, transaction history, or item attributes." The exclusion does not cover any system that generates novel text, images, video or other content in response to user inputs, or that incorporates such a model. To use the carve-out, the exporter is required to submit information to BIS concerning the Destination of Concern[3] customer, the aggregate TPP supplied, and the diligence it performed.

KNOWLEDGE

Notably, the "knowledge" threshold imposes a high level of diligence requirements on exporters. Exporters are expected to now obtain "know your customer" ("KYC") information from foreign data centers, including whether any customer is directly or indirectly owned or controlled by a Destination of Concern company. The data centers at issue declining or being unable to provide this information will be presumptively construed as giving the exporter "knowledge" of prohibited end-use.

The new control under § 744.24 also applies which there is "knowledge" of any downstream cloud customers. For example, a license is required if a data center provides remote access to a non-D:5 customer that is in turn training SI models for, participating in the training of SI models for, or providing SI models to a D:5 company.

AGGREGATION

The 12 million TPP threshold applies whether provided by one data center or through linked data centers. For reference, the 12 million aggregate TPP threshold equates to about 2,400 A100 chips or 750 H100 chips. Many

[3] "Destinations of Concern" refers to end-user locations requiring a license in the IFR, which are China/D:5 countries.

data centers in Southeast Asia and elsewhere will exceed this threshold. The IFR does not specify whether aggregation is required in the case of a data center selling compute power to multiple China/D:5-headquartered customers.

EXISTING ARRANGEMENTS AND THE 90-DAY PERIOD

Under the newly proposed § 744.24(b)(3), existing remote data centers that provide a "significant volume" of computing power to China/D:5-headquartered companies prior to the publication date that wishes to continue providing these services "must" obtain a license within 90 days of the effective date (February 17, 2027) or "face future export restrictions." The IFR does not specify the restrictions that may be imposed, but they could include the potential for designation on the Entity List. The term "significant volume" is also undefined in that paragraph, but the preamble uses "significant volume of computing power" to describe the 12 million aggregate TPP control itself, which supports reading the two together.

CHANGE OF CUSTOMERS

Additionally, BIS stresses in the IFR commentary that a change from a non-prohibited to a prohibited end use under § 744.24 is considered a "transfer (in-country)," requiring BIS authorization. This is reflected in § 744.24(e), which imposes a notification requirement on the exporter, reexporter, or transferor who must inform recipient of the advanced chips that if these items will later be used in a data center to provide 12 million aggregate TPP computing power to China/D:5-headquartered companies, a BIS authorization is required for such change in end-use.

Interpretation of Existing End-Use Controls That Implicates Past Conduct

The commentary to the IFR emphasizes that § 744.23 requires a license for any export, reexport or transfer (in-country) "for an entity" that is headquartered, or whose ultimate parent is headquartered, in China/D:5 countries. The commentary specifically states that this control reaches exports, reexports and transfers "*on behalf of*" China-headquartered companies, specifically including where such a Chinese company is "the purchaser in the transaction (directly or indirectly)" and also where a Chinese company is "the exclusive or primary (greater than 50 percent of total compute) remote end user of the data center computing capacity." BIS states that this has been the rule since October 2023, and BIS encourages parties to submit voluntary self-disclosures of past violations.

License Requirements for Five "Diversion-Risk" Countries

The IFR also adds a license requirement for advanced SI chips and related items exported, reexported, or transferred within Indonesia, Malaysia, Singapore, Brazil, and Thailand, as BIS has concluded these countries present an "unacceptable risk of diversion." License applications will be reviewed on a case-by-case basis, taking into account the effectiveness of the destination country's export controls. Where, however, the data center's primary or exclusive customer is a Chinese or Destination of Concern customer, such license application will presumably still be subject to the more restrictive presumption of denial under § 744.23. Additional countries may

be added to that list by the Secretary of Commerce in consultation with the Secretary of State or the Assistant to the President for National Security Affairs.

Exports to these diversion-risk countries to an ultimate consignee or end user headquartered, or whose ultimate parent is headquartered, in the United States are generally excepted from this license requirement, provided the exporter files a report with BIS by the first business day of the month after the transaction. The report must contain (1) each party to the transaction and its ultimate parent; (2) the destination; (3) each product's ECCN, name, SKU, TPP, and quantity; and (4) the export date. Here again, however, even in the case of U.S. person ownership, where the data center's primary or exclusive customer is a Chinese customer, such license application will likely be subject to the more restrictive presumption of denial.

Front-End Fabricators and OSATs

New § 744.23(a)(3)(i)(C) requires a license for "applicable advanced logic integrated circuits" specified in 3A090.a that are designed by a company that is neither an approved nor an authorized IC designer and that are exported, reexported or transferred by a front-end fabricator or OSAT to or within any destination. The IFR also amends Note 1 to 3A090.a to remove the ability to overcome the 3A090.a presumption for IC designers located in, or with an ultimate parent headquartered in, Country Groups D:1, D:4 or D:5 or the five diversion-risk countries. Foundry and packaging clients should review their designer-attestation processes accordingly.

AI Diffusion Rule

This IFR also formally rescinds the never-enforced regulations implementing the Biden-era AI Diffusion Rule.

Effective Date

The Rule went into effect on November 19, 2026. Comments on the revisions and additions in the rule must be submitted by January 18, 2027.

Implications and Trends

The new rule represents the administration's restructured approach to try to minimize the use of SI-related products to entities that could use them to develop capabilities contrary to U.S. interests.

Chipmakers, exporters, distributors, resellers, cloud providers and data center operators should promptly assess their exposure to this IFR and update controls as needed. Exporters should begin incorporating contractual compliance representations for data center customers, update KYC procedures to understand the end-users of data center customers, and determine whether any data center customers are located in any of the five "diversion-risk" countries.

Cloud providers and data center operators should similarly review and revise KYC procedures, determine whether any of their customers are China/D:5-headquartered companies or are training or providing SI models for D:5

companies, and determine how much aggregate TPP each facility, and any data centers linked to it, makes available to such entities.

Existing cloud computing providers with an anchor customer headquartered in China or other D:5 countries should consider and seek advice on whether a license is required and also consider whether past transactions raise any issues under BIS's newly stated interpretation of § 744.23 and whether a voluntary self-disclosure is warranted.

For further information regarding this memorandum, please contact one of the following authors:

WASHINGTON, D.C.

Abram J. Ellis
+1-202-636-5579
aellis@stblaw.com

Hudson Bennett
+1-202-636-5533
hudson.bennett@stblaw.com

Christine Tillema
+1-202-636-5559
christine.tillema@stblaw.com

Jim Perry
+1-202-636-5717
james.perry@stblaw.com

Claire Cahoon
+1-202-636-5828
claire.cahoon@stblaw.com

Ryan D. Stalnaker
+1-202-636-5992
ryan.stalnaker@stblaw.com

J. Austin Lowe
+1-202-636-5862
austin.lowe@stblaw.com

NEW YORK CITY

George S. Wang
+1-212-455-2228
gwang@stblaw.com

Anais Bourbon
+1-212-455-3427
anais.bourbon@stblaw.com

David H. Caldwell
+1-212-455-2612
dcaldwell@stblaw.com

Shuhao Fan
+1 212-455-3036
shuhao.fan@stblaw.com

Daniel S. Levien
+1-212-455-7092
daniel.levien@stblaw.com

BEIJING

Xue Feng
+86-10-5965-2999
xue.feng@stblaw.com

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