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Commerce Department Releases New Export Rules for Advanced AI Chips and Data Centers

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Key Takeaways

- License trigger turns on the end customer: A license is required when a data center anywhere will provide more than 12,000,000 aggregate TPP to a Restricted Country-headquartered company, measured across linked sites.
- The rule looks through the direct customer: It reaches customers that train or provide models for Restricted Country companies, as well as affiliates whose ultimate parent is headquartered there.
- Five new license destinations: Shipments to Indonesia, Malaysia, Singapore, Thailand and Brazil will need a license; US-headquartered recipients are exempt but must report monthly.
- Diligence is essential: If a data center will not provide customer diligence information, you are presumed to know of a prohibited end use.

On November 16, the Commerce Department's Bureau of Industry and Security (BIS) released "Addressing Remote Access to Advanced Semiconductors," an interim final rule (IFR) to address remote access to advanced artificial intelligence (AI) chips and servers. According to BIS, the IFR was written by and at the direction of the Department of the Treasury and the National Security Council, and is primarily aimed at stopping companies in China, among other restricted countries, from renting large amounts of US-based AI compute from data centers in third countries.

The good news for data centers in allied countries is that the rule does not ban US chips; it does, however, require a license whenever a supplier knows that a data center will provide more than 12,000,000 aggregate total processing performance (TPP) of compute to or for a company headquartered in China, Macau or another Country Group D:5 destination (see "Restricted Countries" below). The rule also formally rescinds the Biden-era AI Diffusion Rule, including its country tiers and Data Center Validated End-User program.

What this means for you

If you own, operate, finance or supply hardware to data centers outside the United States, this rule may affect your existing and future customer relationships, even where the facility is in an allied country. The most immediate priorities are reviewing your customer base for Restricted Country ownership or control and determining whether any current arrangements will need a license within the 90-day transition period.

What is prohibited

A license is required to export, reexport or transfer in-country covered advanced-computing items (generally, advanced AI chips and servers classified under ECCNs 3A090 and 4A090 and related .z items) if the supplier knows the items are destined for a data center anywhere in the world that is providing, or will provide, more than 12,000,000 aggregate TPP to or for a Restricted Country-headquartered company. The threshold is measured across a single facility or across linked data centers, including digitally linked sites that share resources, balance workloads or replicate data as a unified whole.

Restricted Countries

The "Restricted Countries" are Macau as well as the destinations in Country Group D:5 (US arms-embargoed destinations), which, as of the date of the IFR, include the following: Afghanistan, Belarus, Burma, Cambodia, Central African Republic, China, Cuba, Democratic Republic of the Congo, Eritrea, Haiti, Iran, Iraq, Lebanon, Libya, Nicaragua, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, Yemen and Zimbabwe.

Look through the contract counterparty

The rule applies where a customer outside the Restricted Countries trains models for, participates in training for or provides models to a Restricted Country company. It also reaches subsidiaries and affiliates located elsewhere if the company or its ultimate parent is headquartered in a Restricted Country. BIS separately confirmed that an existing end-use control licensing requirement already applies to data center capacity where a Restricted Country company is the purchaser, or the exclusive or primary (more than 50 percent) remote user.

New License Requirement for Five High-Diversion Destinations

Once the IFR is effective, covered advanced-computing items shipped to Indonesia, Malaysia, Singapore, Thailand or Brazil will require a license. Although these are not embargoed countries, BIS has flagged them for diversion risk and will review applications case by case, considering each country's export control regime and cooperation with BIS.

Exclusion for US-headquartered recipients: No license is needed where the ultimate consignee or end user (or its ultimate parent) is headquartered in the United States, but the exporter must file monthly reports with BIS, due by the first business day of the month following each transaction.

Your Compliance Obligations

Conduct know-your-customer diligence: If you supply covered items, you are expected to obtain, and be able to produce, information on the foreign data center's customer diligence, including direct and indirect ownership or control by Restricted Country persons. If a data center declines or is unable to provide that information, you will be presumed to know of a prohibited end use unless you resolve the red flag before proceeding.

Foreign assembly does not avoid the rule: The prohibition continues to apply after covered US-origin chips are incorporated into foreign-made servers or other products, and the usual de minimis rules cannot be relied upon where a prohibited end use is known anywhere in the supply chain.

Monitor for changes in customer use: If a data center later begins supplying covered-scale compute to a Restricted Country company, that change is treated as a transfer requiring BIS authorization, regardless of whether the current owner was a party to the original shipment. Suppliers making unlicensed shipments on or after the effective date must notify recipients in writing of this authorization requirement and of BIS's know-your-customer guidance.

Deadline for existing arrangements: A data center already providing covered-scale compute to a Restricted Country company must obtain a license within 90 days after the effective date to continue those services. If you believe an existing arrangement may already fall within the related existing control, BIS encourages a voluntary self-disclosure. We recommend speaking with counsel before taking that step.

Narrow recommender exception: Compute used exclusively for a commercial recommender system (such as product or content recommendations by retailers and social media platforms) is excluded, provided the supplier submits specified information to BIS, including the customer, the aggregate TPP provided and the diligence performed. Any system that generates text, images, audio, video, software or other new content does not qualify. Note that the IFR preamble separately states that operators serving recommender systems may continue for 90 days but then need a license, so if you plan to rely on this exception, we recommend confirming its availability first. We would be glad to help.

What This Means for Data Center Owners, Lenders and Securitization Participants

Projects located outside the Restricted Countries and the five high-diversion destinations (for example, in Europe) may continue to acquire and operate covered US hardware for ordinary customers. For most projects, the key question will be customer mix: a large dedicated GPU cluster, an opaque reseller or broker arrangement, a China-controlled affiliate or aggregated capacity across linked campuses can trigger the license requirement even where the facility is in an allied country.

Practical steps we recommend: (1) Screen customers and beneficial owners for Restricted Country ownership or control; (2) obtain use-case representations, including model-training uses; (3) include contractual prohibitions on Restricted Country use and resale, with audit, suspension and termination rights; (4) track aggregate compute allocated per customer group across linked sites against the 12,000,000 TPP threshold; (5) escalate before accepting any large Restricted Country-connected customer; and (6) for lenders and securitization sponsors, add export control diligence to underwriting, expand related representations, covenants and event-of-default triggers, and consider disclosure of the rule in offering documents for data center asset-backed securities (ABS) and similar transactions.

Timing and Licensing Policy

Effective date: The rule takes effect on publication in the Federal Register; the 90-day transition should be measured from publication, rather than from the November 16 announcement date. ***Comments*** are due 60 days after publication. If the rule affects your business, this is an opportunity to make your views known to BIS, and we can help you prepare and submit comments. ***Shipments in transit*** that lose license-free eligibility may proceed if they are en route on the publication date and completed within 30 days.

Licensing policy: Applications under the new remote-compute control are reviewed case by case. Direct sales to Restricted Countries or Restricted Country-headquartered entities remain subject to a presumption of denial, apart from a limited case-by-case pathway for lower-performance chips destined for China or Macau.

How we can help: Our team is closely monitoring the rule's publication in the Federal Register and any further guidance from BIS.

This client update is for general information only and does not constitute legal advice.

Primary sources

1. U.S. Department of Commerce, BIS press release, November 16, 2026. BIS announcement PDF

2. U.S. Department of Commerce, BIS, Addressing Remote Access to Advanced Semiconductors, interim final rule (RIN 0694-AK50), particularly new and amended EAR sections 742.6, 743.10, 744.23, and 744.24. BIS rule text PDF
3. U.S. Department of Commerce, BIS, Supplement No. 1 to Part 740, Country Groups, Country Group D:5. BIS EAR Country Groups

CONTACTS

If you have questions about how the rule may affect your specific transactions, please contact your Katten attorney or any of the following attorneys.



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