Holland & Hart



David Glynn

Of Counsel
303.295.8071
Denver
djglynn@hollandhart.com



Christine Garson

Associate
303.293.5977
Denver
cmgarson@hollandhart.com

BIS Restricts Remote Access to Advanced AI Chips Located in Foreign Data Centers

Insight — November 25, 2026

On November 19, 2026, the Department of Commerce, Bureau of Industry and Security ("BIS") published an interim final rule entitled "*Addressing Remote Access to Advanced Semiconductors*" (the "IFR"), 91 FR 74970, effective immediately.

The IFR tightens U.S. export controls on advanced AI ("Super Intelligence" or "SI") chips and the computers that contain them. The core new control targets overseas data centers that give companies tied to China, Macau, and other countries of concern remote access to large amounts of computing power. The IFR regulates exports, reexports, and in-country transfers of controlled items to and within foreign destinations.

I. Key Changes

The IFR amends the Export Administration Regulations ("EAR") in four main ways:

1. **New data center end-use control (15 C.F.R. § 744.24).** A license is required to export, reexport, or transfer (in-country) advanced SI chips and related items if the exporter knows the items are going to a data center anywhere in the world that will provide significant volumes of computing power (greater than 12,000,000 aggregate total processing performance (TPP)) (at one site or through "linked data centers") to or for companies headquartered in, or whose ultimate parent is headquartered in, Macau or a Country Group D:5 country (which includes China). License applications are reviewed case by case.
2. **New country license requirement for five "diversion risk" countries.** A license is now required to export advanced SI items to or within Indonesia, Malaysia, Singapore, Thailand, Brazil, and any additional country the Secretary of Commerce designates. This requirement does not apply where the ultimate consignee or end user is headquartered (or has its ultimate parent headquartered) in the United States, provided the exporter files monthly reports with BIS under new § 743.10.
3. **Tighter rules for chip fabricators and packagers.** Foundries ("front-end fabricators") and packaging companies ("OSATs") have fewer ways to overcome the presumption that an advanced logic chip is a controlled 3A090.a chip when the chip designer is located in, or has a parent headquartered in, a Country Group D:1, D:4, or

D:5 country, or one of the five “diversion risk” countries above.

4. **Formal rescission of the AI Diffusion Rule.** The IFR formally rescinds BIS's January 2025 “Framework for Artificial Intelligence Diffusion,” also known as the “AI Diffusion Rule.”

II. Who the IFR Applies To

- Exporters, reexporters, and in-country transferors of covered advanced computing items (for example, items in ECCNs 3A090 (other than 3A090.c), 4A090, and related “.z” items, software, and technology).
- Owners and operators of foreign (non-U.S.) data centers. A data center that later begins providing significant computing power to D:5- or Macau-headquartered companies must obtain a license for that change in end use. Data centers already providing such services must obtain a license within 90 days of the IFR effective date to continue.
- Parties that ship to foreign data centers, who must obtain enough information about the data center's “know-your-customer” diligence (including on direct or indirect ownership or control by D:5 or Macau persons). A data center's refusal or inability to provide that information is treated as a red flag.
- Exporters shipping without a license, who must notify recipients that BIS authorization is required if the items are later used for a prohibited data center end use.
- Front-end fabricators and OSATs producing advanced logic chips, as described above.

III. Who the IFR Does Not Apply To

- Commercial recommender systems: the data center prohibitions do not apply when computing power is provided only for an AI tool designed and used exclusively to rank, filter, or suggest commercial products, services, or content (such as those used by online retailers and social media companies), provided the required information is submitted to BIS. This exclusion does not cover generative AI systems.
- S.-headquartered companies receiving items in Indonesia, Malaysia, Singapore, Thailand, or Brazil, subject to the monthly reporting condition.
- Data centers that do not provide more than 12,000,000 aggregate TPP to or for D:5- or Macau-headquartered companies.
- Activity that does not involve an export, reexport, or in-country transfer of covered items to or within a foreign destination, such as purely domestic U.S. data center operations.

IV. Important Dates

IFR Effective Date	November 19, 2026

Savings Clause	Shipments already en route on November 19, 2026 may proceed under their prior authorization if completed by December 21, 2026.
90-Day Transition	Data centers already serving D:5- or Macau-headquartered customers have 90 days from the effective date, November 19, 2026, to obtain a license (i.e., by February 17, 2027).
Comment Period	Comments must be received by January 19, 2027.

V. Conclusion

The IFR's new controls are aimed at computing power "located in foreign data centers" and at "overseas data centers," and its license requirements are triggered by exports, reexports, and in-country transfers of covered items to or within foreign destinations. Purely domestic U.S. activity is generally outside the new controls, although other EAR rules (such as deemed exports) still apply.

Affected companies may consider:

- Mapping where covered items are shipped, installed, and used, including through resellers and cloud partners.
- Updating "know-your-customer" procedures to identify direct and indirect D:5 ownership or control and require foreign data center counterparties to share their diligence.
- Identifying existing services to D:5 entities that need a license before the 90-day deadline.
- Confirming U.S.-headquarters status and setting up § 743.10 reporting for shipments to the five diversion risk countries.
- Adding end-use change notices to documentation for unlicensed exports.
- Providing comments to BIS by January 19, 2027.

Holland & Hart's Export Controls, Economic Sanctions, and Customs team stays abreast of regulatory and policy developments—read more about our services here.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP.

Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.