

GIBSON DUNN



**Sanctions & Export Enforcement and
International Trade Advisory & Enforcement Update**

May 20, 2025

BIS Initiates Rescission of AI Diffusion Framework; Issues Strong AI and Advanced IC Guidance and Warnings, with More to Come

The Bureau of Industry and Security has initiated the rescission of the AI Diffusion Framework and announced additional guidance, policies, and plans to introduce a replacement set of rules regulating AI models and advanced computing technologies, with a continued focus on China.

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) officially announced last week that it is rescinding the AI Diffusion Framework (the Framework) issued in the closing days of the Biden administration,^[1] and will be replacing the rule with a "stronger but simpler" framework in the future.^[2]

At the same time, BIS released a trio of guidance and policy statements which significantly expand the risks for companies using products made with advanced chips made by companies physically present in, headquartered in, or that are a subsidiary of a parent located in, China (including Hong Kong and Macau), with a specific notice regarding certain advanced chips produced by Huawei. The releases also heighten diligence expectations for any company exporting, reexporting or transferring U.S. controlled advanced integrated circuits (ICs), including to or by Infrastructure as a Service (IaaS) providers, particularly to parties headquartered in countries subject to U.S. arms embargoes such as China (including Hong Kong and Macau).

Rescission of the Framework

As discussed in a [prior client alert](#), the Framework, through a multi-part control structure, would have created additional rules to restrict “countries of concern” (i.e., countries listed in BIS Country Group D:5 as subject to a U.S. arms embargo, which include, among many others, Russian, Iran, Venezuela, and China (including Hong Kong and Macau)) from obtaining advanced U.S. and allied closed-weight AI models by broadly:

- Expanding licensing requirements for the export of advanced ICs;
- Imposing controls on frontier AI models; and
- Closing a loophole that previously allowed persons in countries of concern rent access to computing power outside their countries.

A key aspect of the Framework was to create a three-tiered licensing policy with a more permissive structure allowing exports to and among countries whose export controls are aligned with the U.S., imposing an effective embargo against countries the U.S. perceives as threats, and detailing a conditional policy for all other countries yet to adopt certain safeguards against exports supporting the unchecked development of frontier AI models.

The rescission of the Framework now means that, until a new regulation is issued, there are no express controls on general purpose AI models, whether proprietary, published, or otherwise. Questions remain, however, as to whether AI models that are specially trained to provide users with design, development, or other kinds of controlled technology are subject to export controls (and if so, how export controls apply to their development, deployment, and use).

AI Diffusion Replacement Rule

In its press release announcing the rescission of the Framework, BIS stated that it “will issue a replacement rule in the future.” Among other potential changes, the Trump administration has signaled an interest in reworking the tiered system of access to U.S. AI chips. Potential options include replacing the tiered system with bilateral agreements reached with counterparts on a country-by-country basis.[\[3\]](#)

While the Trump administration has explained that it is going back to the drawing board to replace the Framework, the national security drivers for the Framework controls remain, and we assess that any new regulations would retain some version of the following Framework elements:

- License exceptions to support use and production by countries who adopt parallel export controls on AI chips and AI models to certain end uses and end users;
- A validated end user (VEU) authorization system for data centers to facilitate the supply of advanced ICs to end users in destinations that do not raise national security or foreign policy concerns. (While the Universal VEU / National VEU categories no longer apply, the data-center focused VEU regulation from October 2024 remains intact);[\[4\]](#)
- Enhanced customer diligence and reporting requirements for recipients of large quantities of AI chips; and

- Controls on at least some proprietary AI models.

As such, we advise companies to prepare for such features when designing compliance systems and entering into new contract arrangements for counterparties that will entail the use of AI chips and AI-optimized data centers for the support of AI model training and inference.

Guidance and Policy Statements

BIS's publication of three advisories on the same day it rescinded the Framework indicate that the Trump administration will continue an aggressive approach towards China-related export controls.

1. Heightened Risk of Export Control Violations from use of Advanced-Computing Integrated Circuits Designed or Made by Chinese Companies

In its [Guidance on Application of General Prohibition 10 to People's Republic of China Advanced-Computing Integrated Circuits](#) (the IC Guidance), BIS substantially increases its compliance expectations for industry actors that use China-linked advanced-computing ICs meeting the parameters for control under Export Control Classification Number (ECCN) 3A090 by creating a presumption that such dealings violate U.S. export controls. While the warning extends to cover chips that have been developed or produced by companies located in, headquartered in, or whose ultimate parent company is headquartered in any country included in BIS Country Group D:5, BIS focuses its guidance primarily on China and specifically calls out specific Huawei-made chips, namely the Huawei Ascend 910B, Huawei Ascend 910C, and Huawei Ascend 910D.

BIS explains that its reference to Huawei chips is only illustrative, however, and states that there is a high probability that all chips meeting the parameters of 3A090 were likely designed or produced with U.S. software, technology, or equipment, and that a license therefore would have been required for various activities connected to companies in China or specifically restricted on the Entity List. Because BIS has not granted such licenses, BIS notes that there is a high probability that any such chips designed or produced by companies located in, headquartered in, or with an ultimate parent company headquartered in China were manufactured in violation of the EAR, and puts companies on notice that it will presume that General Prohibition 10 liability will extend to any further activity involving these chips.

[General Prohibition 10](#) is a broad and temporally and geographically unbounded regulation that prohibits dealings on an item subject to the EAR "with knowledge [including a reason to know] that a violation of the EAR has occurred, is about to occur, or is intended to occur in connection with the item." For example, in 2022, BIS listed 73 aircraft that had flown into Russia in violation of the EAR and noted that "any subsequent actions taken with regard to any of the listed aircraft, including, but not limited to, refueling, maintenance, repair, or the provision of spare parts or services," are subject to General Prohibition 10. [\[5\]](#) In its press release, BIS then emphasized that any form of service to the listed aircraft likely constitutes a violation of U.S. export controls, and the potential for General Prohibition 10 liability created waves that hit not only direct service providers of aircraft – including aftermarket part manufacturers and distributors, maintenance

organizations, airport operators, and refuelers – but also aircraft finance sector players such as insurers, lenders, and underwriters.

BIS's IC Guidance goes a step beyond this precedent by creating a presumption that General Prohibition 10 restrictions apply to all China-linked ICs, and stating that the mere use of these chips could make one subject to enforcement actions. BIS stops short, at least for now, of stating that the use of AI models that were trained by China-linked companies using such ICs could be a General Prohibition 10 issue.

2. Heightened Risk of Export Control Violations from AI Chips and AI Models

BIS also used the occasion of its rescission of the AI Framework rescission to remind data center operators and IaaS service providers, among others that there are certain “catch-all” prohibitions on the use of AI chips for certain end uses and by certain end users. In its [Policy Statement on Controls that May Apply to Advanced Computing Integrated Circuits and Other Commodities Used to Train AI Models](#) (the Policy Statement), BIS warns of the heightened risk of prohibited transactions arising from dealings that involve WMD or military-intelligence end users and advanced ICs and related commodities (e.g., those classified under ECCNs 3A090.a, 4A090.a, as well as .z items in Categories 3, 4, and 5).

Specifically, (i) exports, re-exports, or transfers (in-country) of advanced computing ICs and commodities or (ii) providing “support” (as defined in 15 C.F.R. § 744.6(b)(6)) or performing any contract, service, or employment to assist the training of AI models may trigger a license requirement if the exporter, re-exporter, transferer, or service provider:

- Has “knowledge” or a “reason to know” that the advanced computing ICs and commodities, support, or services will be used to conduct or assist the training of AI models for or on behalf of parties headquartered in D:5 countries (including China) or Macau, and
- Has “knowledge” or a “reason to know” that the AI model will be used for WMD or military-intelligence use/user.

When read together with its Red Flag Guidance, discussed below, the BIS Policy Statement notifies exporters of its heightened end use and end user diligence expectations, both for companies supplying the IaaS providers with controlled ICs and for the IaaS providers themselves.

3. Red Flags and Diligence Actions

Finally, in its [Industry Guidance to Prevent Diversion of Advanced Computing Integrated Circuits](#) (the Red Flag Guidance), BIS provides exporters with transactional and behavioral red flags and suggested due diligence actions that are specific to exporters of advanced computing ICs.^[6] The IC-related red flags focus on various suspicious behaviors concerning the customer's address or business activities that are not consistent with the need for advanced computing ICs.

Notable, however, is BIS's focus on IaaS providers and the diligence required to both supply IaaS providers with controlled ICs and for IaaS providers to use controlled ICs. To that end, the Red Flags Guidance provided:

- Data Center /IaaS Red Flags:
 - The data center to which the advanced ICs and/or commodities containing such ICs are being exported does not or cannot affirm it has the infrastructure (e.g., power/energy, cooling capacity, or physical space needed to run servers containing advanced ICs) to operate the advanced computing ICs and/or commodities that contain such ICs.
 - The customer providing IaaS does not or cannot affirm that users of its services are not headquartered in the PRC, whether or not such customer is located inside or outside of China and Macau.
- Data Center / IaaS Diligence Actions:
 - The data center to which the advanced ICs and/or commodities containing such ICs are being exported does not or cannot affirm it has the infrastructure (e.g., power/energy, cooling capacity, or physical space needed to run servers containing advanced ICs) to operate the advanced computing ICs and/or commodities that contain such ICs.
 - The customer providing IaaS does not or cannot affirm that users of its services are not headquartered in the PRC, whether or not such customer is located inside or outside of China and Macau.

4. **Key Takeaways**

Together with BIS's intent to replace the AI Diffusion Framework with a "stronger but simpler" version, the three advisories make clear that despite the shift in political winds in D.C., the U.S. Government continues to remain concerned about the diversion of advanced ICs to Chinese end users and to certain kinds of end users and end uses. While BIS's rescission of the Framework may appear at first to provide temporary relief for AI chip suppliers, distributors, and customers, BIS's precedent-setting guidance on the use of Chinese AI Chips, and its heightened and elaborated due diligence expectations, especially for IaaS and associated service providers, are regulatory in effect and lay the groundwork for aggressive BIS enforcement premised on General Prohibition 10 theories of liability.

Our team works daily with clients to develop the kinds of due diligence frameworks, contractual protections, and other compliance system tools to reflect BIS's rapidly evolving guidance on AI chip exports, AI model development, and AI model use, and to advise on the kinds of safeguards investors, data center developers, and others should be looking to put place while the Trump administration works to replace the Framework with its own.

[1] U.S. Dep't of Commerce, Press Release, *Department of Commerce Announces Rescission of Biden-Era Artificial Intelligence Diffusion Rule, Strengthens Chip-Related Export Controls* (May 13, 2025), <https://media.bis.gov/press-release/department-commerce-rescinds-biden-era-artificial-intelligence-diffusion-rule-strengthens-chip-related>.

[2] Karen Freifeld, *Trump Officials Eye Changes to Biden's AI Chip Export Rule, Sources Say*, Reuters (Apr. 29, 2025), <https://www.reuters.com/world/china/trump-officials-eye-changes-bidens-ai-chip-export-rule-sources-say-2025-04-29>.

[3] For example, the recent announcement of a "US-UAE AI Acceleration Partnership" framework and agreements to expand the UAE's access to U.S. AI chips may reflect President Trump's preference for bilateral agreements in the AI sector. See Gram Slattery, et. al., *Trump Announces \$200 Billion in Deals During UAE Visit, AI Agreement Signed*, Reuters (May 15, 2025), <https://www.reuters.com/world/middle-east/trump-heads-uae-it-hopes-advance-ai-ambitions-2025-05-15>.

[4] BIS, *Expansion of Validated End User Authorization: Data Center Validated End User Authorization*, 89 Fed. Reg. 80080 (Oct. 2, 2024) (to be codified at 15 C.F.R. pt. 748), <https://www.govinfo.gov/content/pkg/FR-2024-10-02/pdf/2024-22587.pdf>.

[5] BIS, *Commerce Department Updates List of Aircraft Exported to Russia in Apparent Violation of U.S. Export Controls* (Mar. 30, 2022), <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/2942-2022-03-30-bis-list-of-aircraft-violating-the-ear-press-release-final/file>.

[6] See also [Supplement No. 3 to Part 732, Title 15](#) (providing sector non-specific red flags).

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