

ALERT

BIS Rescinds AI Diffusion Rule and Issues Guidance on Advanced Computing Integrated Circuits

May 22, 2025

On May 12, 2025, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) announced the rescission of the previously issued Framework for Artificial Intelligence (AI) Diffusion Rule. The following day, May 13, 2025, BIS issued two guidance documents and one policy statement on advanced computing integrated circuits (IC).

BIS Rescinds AI Diffusion Rule

The AI Diffusion Rule was issued by the previous Administration on January 15, 2025, and its compliance requirements were set to come into effect on May 15, 2025. As detailed in our prior alert, the Rule – which introduced new controls on advanced closed-weight AI models, expanded controls on advanced computing technology and ICs, and created a new authorization process for building data centers abroad – received considerable pushback from U.S. allies and domestic AI industry leaders, who argued that the Rule could weaken global competitiveness and undermine AI innovation. In its announcement, BIS states that its enforcement officials have been directed not to enforce the Rule. The announcement further states that BIS plans to publish a Federal Register notice formalizing the rescission of the Rule and will issue a replacement rule in the future.

Guidance on Application of GP10 to Use of Advanced Computing ICs from China

BIS issued guidance on the risks of using Chinese advanced computing ICs, including specific Huawei Ascend chips (i.e., 910B, 910C, and 910D). The guidance states that because these chips were

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law

John R. Shane
Partner
202.719.7222
jshane@wiley.law

Matt Lapin
Special Counsel
202.719.3435
mlapin@wiley.law

Rafael A. Andino
International Trade Practice Attorney
202.719.3466
randino@wiley.law

Practice Areas

Artificial Intelligence (AI)
Compliance
Export Controls and Economic Sanctions
Federal Policy and Regulation
National Security

likely developed or produced in violation of U.S. export controls, the use of such Chinese advanced computing ICs risks violating General Prohibition 10 (GP10) and may subject companies to BIS enforcement.

GP10 in the Export Administration Regulations (EAR) prohibits a broad range of activities by U.S. and non-U.S. persons related to items exported with knowledge that a violation of the EAR has occurred (or is about to or intended to occur). In the new guidance, BIS states that all ICs covered by Export Control Classification Number (ECCN) 3A090 designed by companies located in, headquartered in, or with an ultimate parent company headquartered in the People's Republic of China (PRC), whether such chips are themselves produced within or outside the PRC, likely are subject to the EAR and may have been produced in violation of the EAR. Based on this assessment, BIS states that these items are likely subject to General Prohibition 10 restrictions,^[1] and that all persons and companies in the United States and abroad engaging (without BIS authorization) in activities covered by GP10 involving PRC 3A090 ICs and other items (including boards, servers, and assemblies) could be subject to BIS enforcement actions.

Per BIS's guidance, if a party plans to take action with respect to a PRC 3A090 IC, and it has not yet received authorization from BIS, that party should first confirm with its supplier that authorization exists for the export, reexport, transfer (in-country), or export from abroad of the production technology for that PRC 3A090 IC from its designer to its fabricator, and the PRC 3A090 IC itself from the fabricator to its designer or other supplier.

Note that BIS will not pursue enforcement action against parties that obtain a PRC 3A090 IC solely for the purpose of technical analysis or evaluation (such as destructive testing) to determine the technical capabilities of an individual IC.

Industry Guidance on Diversion of Advanced Computing Integrated Circuits

BIS also issued updated guidance on diversion schemes involving advanced ICs (i.e., ICs described in ECCN 3A090.a, ECCN 4A090.a, and paragraph .z items in Categories 3, 4, and 5 of the EAR's Commerce Control List) and commodities containing these ICs, which have been subject to BIS export restrictions since October 2022. Based on its determination that advanced computing ICs are being diverted for military-intelligence and weapons of mass destruction (WMD) end uses by the PRC as part of its military modernization efforts, BIS provides a non-exhaustive list of red flags and due diligence actions for companies to use in evaluating whether a party or identified activity is likely connected to export control evasion.

New transactional and behavioral red flags described by BIS include the following: (1) customers who never received exports of advanced computing ICs prior to October 2022, (2) companies having little to no online presence, (3) the ultimate delivery or installation address being unknown, (4) an inability to determine headquarters location of a customer or its parent (specifically in a destination specified in Country Group D:5), and (5) the inability of data centers (to which the ICs are being exported) to affirm they have the infrastructure to use such ICs.

Due diligence actions described by BIS include: (1) evaluating the customer's date of incorporation and ownership structure to determine whether party headquarters are in Country Group D:5, (2) evaluating the end user and end use of the item, (3) notifying potential customers that items are subject to the EAR and may

require an export license, (4) seeking an end user certification with detailed information on all proposed transaction parties and a certification that the customer will not export, reexport, or transfer advanced computing ICs for restricted military-intelligence end uses or end users or for WMD, (5) obtaining a written attestation from the data center affirming that the end user is authorized to operate at its location and that it has the infrastructure needed to operate the type of server containing the advanced ICs being exported, and (6) evaluating data centers to determine if they have the infrastructure to operate servers containing advanced ICs greater than 10 megawatts and engaging in additional review of data centers at or above this threshold, as they may be able to provide access to a large quantity of advanced computing ICs for training AI models for countries of concern.

Policy on Controls That May Apply to Advanced Computing ICs and Other Commodities Used to Train AI Models

Finally, BIS issued a policy statement regarding activities involving advanced computing ICs that can trigger a license requirement under the catch-all controls of part 744 of the EAR when there is “knowledge” that an AI model will be used for a WMD or military-intelligence end use/user. Specifically, BIS identified the following activities as potentially triggering EAR license requirements:

- Exports, reexports, or transfers (in-country) of advanced computing ICs and commodities subject to the EAR to any party, such as foreign Infrastructure as a Service (IaaS) providers, when the exporter, reexporter, or transferor has “knowledge” (as defined in the EAR) that the IaaS provider will use these items to train AI models for or on behalf of parties headquartered in Country Group D:5 countries (including the PRC) or Macau.
- Transfers (in-country) of advanced computing ICs and commodities subject to the EAR already in the possession of parties such as IaaS providers, if there is “knowledge” that the items will be used by the transferee to train AI models for or on behalf of parties headquartered in Country Group D:5 countries (including the PRC) or Macau.
- A “U.S. person” providing any support or performing any contract, service, or employment, when there is “knowledge” such activity will be used for or may assist the training of AI models for or on behalf of parties headquartered Country Group D:5 countries (including the PRC) or Macau.

Parties that do not obtain BIS authorization prior to engaging in these activities may be subject to potential civil or criminal enforcement action if a violation of the EAR occurs. In addition, foreign parties acting contrary to U.S. national security and foreign policy interests, including by training AI models that could support WMD or military-intelligence end uses for or on behalf of parties headquartered in Country Group D:5 (including the PRC) or Macau, may be added to BIS’s Entity List and subject to a U.S. export ban, even where no violation of the EAR occurs.

Wiley’s National Security, International Trade, and Strategic Competition & Supply Chain practice groups have unparalleled experience and expertise representing a broad range of U.S. and multinational clients in complex export control, sanctions, international trade, and supply chain matters. Wiley’s additional multidisciplinary practice groups, ranging from Artificial Intelligence and Telecommunications to Corporate

Contracts and Environment & Product Regulation, ensure that client's businesses have the necessary resources to succeed in the highly complex and competitive marketplace. To stay informed on all of the Executive Orders and announcements from the Trump Administration, please visit our dedicated resource center. Should you have any questions, please do not hesitate to contact one of the attorneys listed on this alert.

[1] GP10 states, in relevant part: "You may not sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part, any item subject to the EAR and exported or to be exported with knowledge that a violation of the EAR ... is about to occur, or is intended to occur in connection with the item." See 15 C.F.R. § 736.2(b)(10).