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Client Alert

Global Risk & National Security Practice

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November 17, 2026

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On November 16, 2026, the Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce issued an interim final rule on Addressing Remote Access to Advanced Semiconductors (the "IFR"), which is designed to prevent companies based in certain countries, including China, from avoiding U.S. export controls on advanced computing integrated circuits (or chips) through remote access or computing services arrangements. Specifically, the IFR: (a) adds a new end-use control to the Export Administration Regulations ("EAR") for operators of advanced chips at non-U.S. data centers ("Remote Access Providers") that provide a significant volume of computing power to companies headquartered in, or ultimately owned by a company headquartered in, China or any other country that is the subject of a U.S. arms embargo, as identified in Country Group D:5 of supplement no. 1 to part 740 of the EAR, or Macau (each a "Restricted End User"); (b) establishes a destination-based license requirement for exports of advanced chips to Indonesia, Malaysia, Singapore, Thailand, and Brazil; and (c) amends presumptions for front-end chip fabricators and packagers when exporting advanced-node logic chips.

Issuance of the IFR will have significant impacts on Remote Access Providers and offtakers, including artificial intelligence ("AI") companies, connected to China, among other Restricted End Users, which have historically secured access to the computing power of advanced chips through Infrastructure-as-a-Service solutions where physical access to the same advanced chips was restricted under U.S. export controls. Of particular importance, the IFR will prohibit certain ongoing service arrangements between Remote Access Providers and Restricted End Users absent a license from BIS.

The IFR is set to take effect upon publication in the Federal Register on Thursday, November 19.

Key Changes

<u>New Data Center End-Use Control</u>

The IFR adds a new end-use control to the EAR for exports, reexports, or in-country transfers of advanced chips where the exporter has "knowledge" that the items are destined for a non-U.S. data center and will be used to provide a Chinese offtaker or other Restricted End Users with access to a "significant volume" of computing power, which is defined as computing power exceeding an aggregate total processing performance ("TPP") of 12,000,000. This end-use control extends to customers that are not Restricted End Users, but that will train or provide AI models for a Restricted End User. No license exceptions are available, and license applications will be reviewed on a case-by-case basis. There is a narrow carve-out for compute used exclusively for "commercial recommender systems," which expressly excludes generative AI systems.

- *Scope of the "aggregate TPP" threshold.* The 12,000,000 aggregate TPP threshold is measured as the sum of the total processing performance of all covered chips made available to Restricted End Users, whether at a single data center or across "linked data centers." Linked data centers include facilities connected through digital or physical networking infrastructure. That is, capacity cannot be split across connected sites to avoid the threshold.

- *Due diligence.* The IFR requires chip exporters to obtain information regarding Remote Access Providers' "know your customer" due diligence protocols, including whether any of their customers are directly or indirectly owned or controlled by a Restricted End User. A Remote Access Provider's refusal or inability to provide relevant information constitutes a red flag that presumptively establishes "knowledge" for purposes of the IFR's new end-use control, unless the red flag is resolved before proceeding.

- *Limited transition relief.* Remote Access Providers that are currently providing a significant volume of computing power to Restricted End Users are required to obtain a license within 90 days of the IFR's effective date in order to continue those services. Critically, the IFR treats a change from a permitted to a restricted end-use as an in-country transfer, so a Remote Access Provider that deployed advanced chips prior to issuance of the IFR but subsequently begins providing computing power to Restricted End Users in excess of the 12,000,000 TPP threshold would be required to obtain a license despite the absence of an associated physical export. This specific requirement could significantly impact—and potentially prohibit—certain ongoing service arrangements between

Remote Access Providers and Restricted End Users. The IFR does not provide a clear indication of BIS's posture toward the issuance of licenses for preexisting service arrangements, and guidance could be forthcoming to provide market participants with greater clarity on prospects for approval.

- *Responsibility for obtaining the license.* For pre-existing deployments where changes in end use trigger the end-use control and related license requirement, the licensing obligation rests with the Remote Access Provider. For new deployments, the licensing obligation lies with the exporter of the advanced chips to the foreign data center site.

Closing Third-Country Diversion Pathways for Advanced Semiconductors

The IFR seeks to address concerns associated with elevated risk of diversion of advanced chips by replacing the prior worldwide Regional Stability license requirement with two complementary approaches. First, the IFR clarifies the scope of the existing end-user control on advanced chips destined "for an entity" headquartered in any country that is the subject of a U.S. arms embargo or Macau by providing that this control "is not, and has never been" limited to shipments where a Restricted End User is the consignee or end-user. Rather, as the IFR makes clear, this control extends to transactions in which a Restricted End User is, directly or indirectly, the purchaser or primary end user of a Remote Access Provider's total data center capacity. Second, the IFR establishes a destination-based control that turns on the location to which advanced chips are shipped, regardless of the customer, requiring a license for exports of advanced chips to Indonesia, Malaysia, Singapore, Brazil, and Thailand, each of which BIS has identified as presenting an "unacceptable risk" of diversion. License applications will be evaluated on a case-by-case basis. Exports to an ultimate consignee or end user headquartered in, or whose ultimate parent company is headquartered in, the United States are excluded, but the exporter must submit monthly reports to BIS.

The IFR contains a savings clause for shipments of items that, as a result of the IFR, are no longer eligible for a license exception, or for export without a license. Where those items were, or are, en route aboard a carrier to a port of export on the day of the IFR's publication, pursuant to actual orders for export or transfer, the items may proceed under their previous eligibility, provided the export or transfer is completed no later than 30 days after the IFR's publication.

Amended Eligibility Requirements to Overcome Presumptions Related to Export Classification

The IFR also narrows front-end fabricators and Outsourced Semiconductor Assembly and Test ("OSAT") companies' ability to overcome the presumption that any "applicable advanced logic integrated circuit" exported or transferred by a front-end fabricator or OSAT is classified under Export Control Classification Number ("ECCN") 3A090.a of the Commerce Control List of the EAR as a chip for use in a data center. Where a chip designer is located in, or has an ultimate parent headquartered in, a country in Country Groups D:1, D:4, or D:5 under the EAR, or any of the five newly restricted countries, only an attestation from an approved or authorized integrated circuit designer will be sufficient to overcome the presumption. If this narrowed presumption is not met, license requirements applicable to items specified in ECCN 3A090.a apply.

Key Takeaways

The IFR marks a meaningful shift in the Trump Administration's posture toward the provision of remote access to advanced chips, such as graphics processing unit (GPU)-as-a-service solutions that are provided using such advanced chips. Remote Access Providers, such as GPU-as-a-service businesses, may no longer take the position that such services are generally outside the scope of prevailing U.S. export controls based on not being captured by particularized or targeted end-use controls. Remote Access Providers should promptly assess whether any of their existing or contemplated customer engagements involve or would involve Restricted End Users or the provision of a significant volume of computing power, as defined in the IFR, and, as applicable, prepare to address any associated licensing obligations in a timely manner. Both suppliers of advanced chips and Remote Access Providers should also revisit their export controls compliance protocols to ensure that their due diligence procedures, documentation requirements and contractual terms are designed to address relevant customer- and end-user-level identifying, operational and end-use information. Companies may also wish to reevaluate historical arrangements under BIS's stated interpretation of the "for an entity" control.

Please feel free to reach out to your Milbank contacts with any questions or concerns regarding these developments and any related U.S. export control compliance or risk management considerations.

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