



**Written Presentation of  
Assistant Secretary Thea D. Rozman Kendler  
To November 2, 2022  
Open Session of the**

**Information Systems Technical Advisory Committee (ISTAC)**

I'm happy to be back with the Information Systems Technical Advisory Committee (ISTAC) this morning for part of your open session. I'm grateful, as always, for the support you provide to the Bureau of Industry and Security (BIS) as we formulate and implement our export controls.

\* \* \*

This morning I'd like to speak with you specifically about our recent rule on advanced computing that was made public on October 7 and published in the Federal Register on October 13. The comment period on this interim final rule is still open and runs through December 12. If you have not done so already through the email address in the October 13 published rule, please submit your comments in writing to further inform the effectiveness of our rulemaking.

In the meantime, we continue to receive questions on the rule, including from ISTAC members, some of which I will try to address today. You may have seen that we published an initial set of FAQs on October 28 on the BIS website that address the most common questions we have received to date. As I flagged in my October 13 remarks, we plan to continue to publish FAQs on a rolling basis.

To start, I want to be very clear that this rule was crafted based on U.S. national security and foreign policy interests, not economic considerations. Moreover, this rule builds on the ongoing work BIS has been doing for years to restrict access to the advanced dual-use items and technologies of most significant concern to the People's Republic of China (PRC). This rule is just another step in our ongoing work to respond to the national security and foreign policy threats presented by the PRC.

The PRC has mobilized vast resources to support its defense modernization, including the implementation of its military-civil fusion development strategy, as well as economic espionage activities to acquire sensitive, dual-use, and military-grade equipment. It seeks to blur the lines between civilian and military sectors, creating an ecosystem in which it is harder to distinguish civil or commercial trade from trade that will be diverted to military end uses or end users.

By eliminating barriers between civil and military, as the State Department has noted, the PRC is “systematically reorganizing the Chinese science and technology enterprise to ensure that new innovations simultaneously advance economic and military development.”

Sophisticated artificial intelligence technologies and advanced computing capabilities that advanced semiconductors enable are crucial to the PRC achieving its military modernization goals. The more the People’s Liberation Army employs advanced supercomputing capabilities, the more effective it will be at processing massive data that help it improve its overall military planning, decision making, and execution. If the PRC’s goals are realized, Beijing will use these capabilities to significantly enhance its power projection capacity.

That is profoundly concerning, and it is only part of the picture. The PRC looks for military advantage in nearly every innovation and employs those technologies systematically to silence dissent and commit human rights abuses against their own people. Advanced computing and artificial intelligence capabilities, in the wrong hands, can enable further, more widespread human rights abuses.

These are the reasons we are adopting a more sophisticated and effective approach to restricting the PRC’s access to sensitive dual-use technologies, such as cutting-edge chips.

\* \* \*

With that, let me turn to some of the questions you have asked.

**Q: Does BIS anticipate publishing more PRC-specific export controls?**

**A:** We evaluate and assess the effectiveness of our export controls for the PRC on an ongoing basis. Where we see gaps or the need for updates based on national security and foreign policy, we make changes. I don’t have anything to announce but would draw your attention to the National Security Advisor’s recent remarks to the Global Emerging Technologies Summit. I assure you that this process continues even while we work on implementing the October 7 rule.

**Q: The Military End Use controls in Section 744.21 of the Export Administration Regulations (EAR) has a list of “includes but not limited to” military end users. Will BIS consider a similar “includes but not limited to” list for known Section 744.23 end uses for: semiconductor fab facilities with the specifically enumerated capabilities; semiconductor fab facilities with unknown capabilities; and Chinese supercomputer end users or uses?**

**A:** We anticipate that firms will perform due diligence regarding their end-users to ensure they are not operating facilities or supercomputers that exceed the thresholds within the advanced computing rule. Additions to the Entity List are always possible when we identify organizations acting contrary to U.S. national security and foreign policy interests. As I relayed earlier, BIS views advanced chip manufacturing and supercomputer activities in the PRC as a national security concern so I anticipate further Entity List additions in the areas the questioner identified. However, due to the PRC’s military-civil fusion strategy and the potential national security threats posed by any use of these dual-use technologies, each of these rules apply to all entities in the PRC that exceed the given thresholds, regardless of if they are on the Entity List or not.

**Q: Does BIS anticipate providing due diligence guidelines to determine license-required end use/users under the new Section 744.23 controls?**

**A:** For now, in addition to reviewing publicly available information, please be sure you are familiar with the “Know Your Customer Guidance” in Supplement No. 3 to part 732 of the EAR and “Red Flag Indicators” already published in the EAR and [available on our website](#). While we don’t have any plans to publish guidance specific to the Section 744.23 controls, the first set of FAQs published on October 28 do list some types of activities that appropriate due diligence could include. This is an area that would benefit from public comment.

So, if you think there’s a need for specific due diligence guidance for Section 744.23, please make that part of your written comment submission, and let us know what would be most useful.

**Q: Is the end use scope described in Section 744.23(a)(2)(v) intended to restrict the ability of semiconductor manufacturing equipment (SME) companies to build facilities in the PRC to support legacy, non-restricted fab activity? Does it only apply to domestic Chinese SME facilities or also to Chinese facilities of foreign SME companies?**

**A:** The intent is to restrict Chinese domestic SME companies. However, as written the control applies to all such SME companies in the PRC, including foreign SME companies. The license review policy as needed will determine what exports, reexports, or transfers (in country) within the PRC should be approved and which ones should be denied. The scope of this paragraph (a)(2)(v) is another aspect of the rule that the public may comment on.

**Q: Does Section 744.23 apply to fabless/design houses? For example, suppose one has knowledge that a fabless designer is designing a logic integrated circuit below 14 nm and that the fabless designer intends to have that integrate circuit fabbed at a restricted fab in the PRC (i.e., ultimate end use at the fab). Does the § 744.23 end use capture exports to the fabless designer?**

**A:** Yes, the restrictions in section 744.23 apply if there is “knowledge” the items going to the fabless designer are ultimately destined to a prohibited end use in the PRC as specified under section 744.23. Section 744.23 uses the phrase “located in *or destined to the PRC*”. The inclusion of the phrase “*or destined to the PRC*” is included to catch these types of scenarios where a fabless designer may be intended to send a design to the PRC or to a fab located outside of the PRC for producing an item that is ultimately destined to the PRC in a prohibited section 744.23 end use.

\* \* \*

Please also look at the first set of FAQs BIS posted on our website on October 28. We will be publishing further FAQs on the advanced computing rule as a way of providing additional guidance to exporters on how to comply with that provision.

In terms of the published October 28 FAQs, I’d also like to draw your attention to the Q&A we posted on deemed exports, the definition and activities of “U.S. persons”, and the definition of the term “facilities”. In my discussion of these FAQs, I will be paraphrasing the content and encourage you to review what we have posted on our webpage for specifics.

On deemed exports, we clarified that under Section 742.6 of the EAR, the Regional Stability (RS) controls placed on the October 7 advanced computing rule’s new and revised ECCNs do not apply to deemed exports or reexports. That said, those ECCNs also are controlled for Anti-Terrorism (AT) reasons, which require a license for deemed exports or reexports to persons from Iran, North Korea, and Syria.

On the “U.S. person” definition, our FAQ tracks what I noted when I talked about the rule on October 13 -- the term includes:

- Any citizen of the United States, permanent resident alien of the United States, or a protected individual as defined by law (8 U.S.C. 1324b(a)(3));
- Any juridical person organized under U.S. law or any U.S. jurisdiction – this includes foreign branches; and
- Any person in the United States.

We also clarified what activities undertaken by a “U.S. person” trigger a license requirement under Section 744.6(c)(2). Broadly, the activities include authorizing the shipment of, conducting the delivery of, or servicing items that are not subject to the EAR that will be used in the “development” or “production” of integrated circuits to fabrication facilities in the PRC that fabricate integrated circuits at the technology thresholds identified in the regulation.

These license requirements apply even when the “U.S. person” does not have “knowledge” – as defined in the EAR -- whether the activity is for a facility that fabricates chips that meet the October 7 advanced computing rule’s criteria.

Note that unless the “U.S. person” knows a violation is occurring, no license is required when the “U.S. person”: conducts administrative or clerical activities, like arranging for shipment or preparing financial records; or otherwise merely implements a decision to approve a restricted transaction or activity not directly related to providing specific items to or servicing of specific items for advanced PRC fabs.

Let me stress that the guidance in our FAQ only applies to Section 744.6(c)(2). We don’t intend our FAQ to address the scope of other 744.6 subsections or other uses of the terms facilitate or facilitation in the EAR.

Finally, we received several questions about the term semiconductor fabrication “facility,” which is used in the October 7 advanced computing rule but was not specifically defined in that rule. Our October 28 FAQs clarify that, based on the definition of “facilities” in Section 772.1 of the EAR, a semiconductor fabrication “facility” is a building where the production at the restricted technology level occurs. Facilities involved in later steps in the process, such as assembly, test, and/or packaging, that do not alter the technology levels are not covered. This would include Outsourced Semiconductor Assembly and Test (OSAT) facilities. In addition, under the 772.1 definition, each building is a separate facility. If both restricted and unrestricted lines are in the same building, the building – or facility – is subject to the new controls. Exporters and other transaction parties are responsible for conducting due diligence to determine the level of production and where such production occurs, particularly if an entity has multiple buildings at the same address or that are part of the same legal entity.

\* \* \*

Thank you for your time this morning. I look forward to our continued work together and thank you again for committing your time and energy to improving BIS’s work through your TAC service. BIS TAC members are critical to our work to effectively protect U.S. national security. My team and I appreciate your engagement and partnership.

Have a great day.