

July 17, 2026

The Honorable Jeffrey Kessler
Under Secretary for Industry and Security
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Dear Under Secretary Kessler:

I write to express concern and request information about loopholes in U.S. export controls on advanced semiconductors that were created by the Department of Commerce's Bureau of Industry and Security (BIS) "rescission" of the Biden Administration's AI Diffusion Rule. One specific loophole—related to the Foundry Due Diligence Rule ("FDD Rule")—remains open today, and recent reporting suggests that it "may be allowing an unknown number of high-end semiconductors to reach Beijing."¹ While you recently testified that a chip manufacturer providing advanced AI chips to a Chinese front company would violate U.S. controls, you have failed to confirm that BIS is enforcing the worldwide licensing requirement meant to stop potential diversion of those chips, including through countries like Singapore or Malaysia.² Without an adequate replacement rule, these reported gaps may allow our adversaries to acquire sensitive technology and pose threats to our nation's security.

BIS implemented the Foundry Due Diligence Rule in January 2025 to address a breach in U.S. export controls that failed to prevent Huawei, a Chinese multinational technology company, from successfully using an intermediary shell entity to order potentially millions of advanced chips from Taiwan Semiconductor Manufacturing Company (TSMC), a chip manufacturer or "foundry."³ Diversion schemes like the one Huawei employed pose threats to U.S. national security because the Chinese military has openly sought advanced chips.⁴ The FDD Rule requires foundries like TSMC to presume that any advanced chips they export require export licenses, unless certain due diligence obligations are met.⁵ These procedures provide key oversight because they make it much more difficult for entities like Huawei to divert controlled AI chips from TSMC.

¹ Politico Pro, "Commerce nixed tighter China guidance for chipmakers," Ari Hawkins, June 23, 2026, <https://subscriber.politicopro.com/article/2026/06/commerce-nixes-tighter-china-guidance-for-chipmakers-00972160>.

² House Foreign Affairs Committee, "FY27 BIS Budget: the AI Arms Race and the ICTS Office," July 14, 2026, <https://www.youtube.com/live/XcKNV5ZqyAg?si=VJHznmotjWbhODK5&t=5064>.

³ Reuters, "US lawmakers urge tighter rules on contract chipmakers supplying Chinese firms' overseas units," Stephen Nellis, June 8, 2026, <https://www.reuters.com/legal/litigation/us-lawmakers-urge-tighter-rules-contract-chipmakers-supplying-chinese-firms-2026-06-09/>; Reuters, "TSMC could face \$1 billion or more fine from US probe, sources say," Karen Freifeld, April 8, 2025, <https://www.reuters.com/technology/tsmc-could-face-1-billion-or-more-fine-us-probe-sources-say-2025-04-08/>.

⁴ The New York Times, "Chinese Military Sought Nvidia Chips for Years, Report Says," Ana Swanson and Tripp Mickle, June 1, 2026, <https://www.nytimes.com/2026/06/01/business/economy/china-military-nvidia-chips.html>.

The FDD Rule, however, does not itself require export licenses. To remain effective, it relied on the AI Diffusion Rule’s imposition of worldwide license requirements on certain chips, requiring companies to seek approval from BIS before exporting certain advanced AI chips.⁶ The FDD Rule works only if the underlying license requirements are actively enforced. When the Trump Administration announced its rescission and non-enforcement of the AI Diffusion Rule—promising a “future” replacement that, more than a year later, still has not been issued—it inadvertently stripped the FDD Rule of the very license requirement that made it effective.⁷ Without that license requirement, foundries like TSMC may once again fabricate and export advanced chips for unvetted intermediaries in third countries. In essence, your actions created a foundry loophole that brings the United States back to the very circumstances that allowed Huawei to divert millions of AI chips in the first place.

BIS has had every opportunity to fix this loophole and has yet to act—even as outside experts have raised this exact issue.⁸ Its May 31, 2026 guidance closed a different loophole created by the attempted rescission of AI Diffusion—one relating to advanced AI chip exports—but made no mention of the foundry loophole.⁹ More recently, on June 17, 2026, BIS issued additional guidance that again ignored the loophole in the Foundry Due Diligence Rule.¹⁰ Notably, that June 17, 2026 guidance was first uploaded with a reference to FDD in the filename “fdd-faqs-06-17-26”—which was later quietly changed to “May-31-FAQ” without notice or explanation.¹¹

⁵ Post on X by Chris McGuire, June 19, 2026, <https://x.com/ChrisRMcGuire/status/2068046146598039680>; Bureau of Industry and Security, “Implementation of Additional Due Diligence Measures for Advanced Computing Integrated Circuits; Amendments and Clarifications; and Extension of Comment Period; Correction,” February 14, 2025, <https://www.federalregister.gov/documents/2025/02/14/2025-02655/implementation-of-additional-due-diligence-measures-for-advanced-computing-integrated-circuits>.

⁶ Bureau of Industry and Security, “Implementation of Additional Due Diligence Measures for Advanced Computing Integrated Circuits; Amendments and Clarifications; and Extension of Comment Period,” January 16, 2025, <https://www.federalregister.gov/documents/2025/01/16/2025-00711/implementation-of-additional-due-diligence-measures-for-advanced-computing-integrated-circuits>; Bureau of Industry and Security, “Framework for Artificial Intelligence Diffusion,” January 15, 2025, <https://www.federalregister.gov/documents/2025/01/15/2025-00636/framework-for-artificial-intelligence-diffusion>.

⁷ Bureau of Industry and Security, “Department of Commerce Announces Rescission of Biden-Era Artificial Intelligence Diffusion Rule, Strengthens Chip-Related Export Controls,” press release, May 13, 2025, <https://www.bis.gov/press-release/department-commerce-announces-rescission-biden-era-artificial-intelligence-diffusion-rule-strengthens>.

⁸ Bloomberg, “Trump Officials Worry US Loophole Let Chinese Firms Buy Nvidia Blackwell Chips,” Mackenzie Hawkins, June 4, 2026, <https://www.bloomberg.com/news/articles/2026-06-05/trump-officials-worry-us-loophole-let-chinese-firms-buy-nvidia-blackwells>.

⁹ Bureau of Industry and Security, “Guidance Regarding Enforcement of License Requirements for Advanced Computing Items for Entities Headquartered in Country Group D:5 and Macau,” May 31, 2026, <https://www.bis.gov/media/documents/bis-guidance-may-31-2026.pdf>.

¹⁰ Bureau of Industry and Security, “Frequently Asked Questions about Guidance Regarding Enforcement of License Requirements for Advanced Computing Items,” June 17, 2026, <https://web.archive.org/web/20260620203007/https://www.bis.gov/media/documents/fdd-faqs-06.17.26.pdf>; Post on X by Chris McGuire, June 19, 2026, <https://x.com/ChrisRMcGuire/status/2068046146598039680>.

¹¹ Bureau of Industry and Security, “Frequently Asked Questions about Guidance Regarding Enforcement of License Requirements for Advanced Computing Items,” June 17, 2026, <https://web.archive.org/web/20260620203007/https://www.bis.gov/media/documents/fdd-faqs-06.17.26.pdf>; Bureau of Industry and Security, “Frequently Asked Questions about Guidance Regarding Enforcement of License Requirements for Advanced Computing Items,” June 17, 2026, <https://www.bis.gov/media/documents/May-31->

I am deeply concerned that your mismanagement of U.S. export control regulation will create more opportunities for companies like Huawei to once again divert millions of advanced AI chips to China. Under the Export Control Reform Act of 2018 (ECRA), the Department is required to provide “[a]ny information obtained at any time” under any provision of the Export Administration Regulations “upon the request of the chairman or ranking minority member of [the] committee or subcommittee [of appropriate jurisdiction].”¹² As the Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, and to inform the Committee’s oversight of ECRA’s implementation, I request that BIS make the following information available no later than August 7, 2026:

1. Following the “rescission” of the AI Diffusion Rule on May 13, 2025, any “is-informed letter,” advisory opinion, or other written communication, provided to any company on whether export licenses are needed to ship advanced AI chips (including the specific items listed in the May 31, 2026 guidance) to entities headquartered in Country Group D:5, Hong Kong, or Macau or with an ultimate parent company headquartered in Country Group D:5, Hong Kong, or Macau.¹³
2. Following the “rescission” of the AI Diffusion Rule on May 13, 2025, any “is-informed letter,” advisory opinion, or other written communication provided to any front-end fabricator or “OSAT” company regarding whether a license is required to export, reexport, or transfer (in-country) “applicable advanced logic integrated circuits” under the Foundry Due Diligence Rule.¹⁴
3. Following the “rescission” of the AI Diffusion Rule on May 13, 2025, all license information, including the number of applications, application information, licenses issued or denied or returned without action, supporting documentation, and BIS conditions for approval to export, reexport, or transfer (in-country) “applicable advanced logic integrated circuits” under the Foundry Due Diligence Rule.¹⁵
4. Following the “rescission” of the AI Diffusion Rule on May 13, 2025, any “is-informed letter,” advisory opinion, or other written communication to any company or representative of any company addressing whether, or the extent to which, the licensing requirements associated with the Foundry Due Diligence Rule remain in effect.
5. Following the “rescission” of the AI Diffusion Rule on May 13, 2025, all quarterly reports submitted by front-end fabricators under 15 C.F.R. § 743.9 and all Authorized IC Designer KYC vetting forms under Supplement No. 2 to Part 743.

[FAQ.pdf](#).

¹² 50 U.S.C. § 4820 (h)(2)(B)(i).

¹³ Bureau of Industry and Security, “Implementation of Additional Due Diligence Measures for Advanced Computing Integrated Circuits; Amendments and Clarifications; and Extension of Comment Period,” January 16, 2025, <https://www.federalregister.gov/documents/2025/01/16/2025-00711/implementation-of-additional-due-diligence-measures-for-advanced-computing-integrated-circuits>.

¹⁴ *Id.*.

¹⁵ *Id.*

6. All versions, including draft versions, of the document titled “fdd-faqs-06-17-26.pdf” and any assessments of whether the May 13, 2025 non-enforcement decision affected licensing requirements associated with the Foundry Due Diligence Rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Warren", is positioned above a horizontal line.

Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs