ML STRATEGIES

Out with a Bang: President Biden Ends Final Week in Office with Three AI Actions — AI: The Washington Report

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VIEWPOINT TOPICS

- Artificial Intelligence
- AI: The Washington Report

- President Biden's final week in office included three AI actions — a new rule on chip and AI model export controls, an executive order on AI infrastructure and data centers, and an executive order on cybersecurity.
- On Monday, the Department of Commerce issued a **rule** on responsible AI diffusion limiting chip and AI model exports made to certain countries of concern. The rule is particularly aimed at curbing US AI technology exports to China and includes exceptions for US allies.
- On Tuesday, President Biden signed an **executive order (EO) on AI infrastructure**, which directs agencies to lease federal sites for the development of large-scale AI data centers.
- On Thursday, Biden signed an **EO on cybersecurity**, which directs the federal government to strengthen its cybersecurity systems and implement more rigorous requirements for software providers and other third-party contractors.
- The actions come just days before President-elect Trump begins his second term. Yet, it remains an open question whether President Trump, who has previously supported chip export controls and data center investments, will keep these actions in place or undo them.

In its final week, the Biden administration issued three final actions on AI, capping off the administration that took the first steps toward creating a government response to AI. On Monday, the Biden administration announced a **rule** on responsible AI diffusion through chip and AI model export controls, which limit such exports to certain foreign countries. On Tuesday, President Biden signed an **Executive Order (EO) on Advancing United States Leadership in Artificial Intelligence Infrastructure**, which directs agencies to lease federal sites for the development of AI data centers. And on Thursday, Biden signed an **Executive Order on Strengthening and Promoting Innovation in the Nation's Cybersecurity**, which directs the federal government to strengthen its cybersecurity operations.

The new AI actions come just days before President-elect Trump takes the White House. What Trump decides to do with Biden's new and old AI actions, as we discuss below, may provide the first indication of the direction of his second administration's approach to AI.

Rule on Responsible Diffusion of Advanced AI Technology

On Monday, the Department of Commerce's Bureau of Industry and Security announced a sweeping rule on export controls on chips and AI models, which requires licenses for exports of the most advanced chips and AI models. The rule aims to allow US companies to export advanced chips and AI models to global allies while also preventing the diffusion of those technologies, either directly or through an intermediary, into countries of concern, including China and Russia.

"To enhance U.S. national security and economic strength, it is essential that we do not offshore [AI] and that the world's AI runs on American rails," according to a White House **fact sheet**. "It is important to work with AI companies and foreign governments to put in place critical security and trust standards as they build out their AI ecosystems."

The rule divides countries into three categories, with different levels of export controls and licensing requirements for each category based on their risk level:

1. **Eighteen (18) close allies** can receive a license exception. Close allies are "jurisdictions with robust technology protection regimes and technology ecosystems aligned with the national security and

foreign policy interests of the United States." They include Australia, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Italy, Japan, Netherlands, New Zealand, Norway, South Korea, Spain, Sweden, Taiwan, and the United Kingdom.

2. **Countries of concern**, including China and Russia, must receive a license to export chips. A "presumption of denial" will apply to license applications from these countries.
3. **All other countries** are allowed to apply for a license, and "license applications will be reviewed under a presumption of approval." But after a certain number of chips are exported, certain restrictions will apply for these countries.

The rule's export controls fall into four categories depending on the country, its security standards, and the types of chips being exported.

- Orders for chips of up to 1,700 advanced GPUs "do not require a license and do not count against national chip caps."
- Entities headquartered in close allies can obtain "Universal Verified End User" (UVEU) status by meeting high security and trust standards. With this status, these countries "can then place up to 7% of their global AI computational capacity in countries around the world — likely amounting to hundreds of thousands of chips."
- Entities not headquartered in a country of concern can obtain "National Verified End User" status by meeting the same high security and trust standards, "enabling them to purchase computational power equivalent to up to 320,000 advanced GPUs over the next two years."
- Entities not headquartered in a close ally and without VEU status "can still purchase large amounts of computational power, up to the equivalent of 50,000 advanced GPUs per country."

The rule also includes specific export restrictions and licensing requirements for AI models.

- **Advanced Closed-Weight AI Models**: A license is required to export any closed-weight AI model —"i.e., a model with weights that are not published" — "that has been trained on more than 10^{26} computational power." Applications for these licenses will be reviewed under a presumption of denial policy "to ensure that the licensing process consistently accounts for the risks associated with the most advanced AI models."
- **Open-Weight AI Models**: The rule does "not [impose] controls on the model weights of open-weight models," the most advanced of which "are currently less powerful than the most advanced closed-weight models."

The new chip export controls build on previous export controls from 2022 and 2023, which we previously **covered**.

Executive Order on AI Infrastructure

On Tuesday, Biden signed an Executive Order on Advancing United States Leadership in Artificial Intelligence Infrastructure. The EO directs the Department of Defense and Department of Energy to lease federal sites to the private sector for the development of gigawatt-scale AI data centers that adhere to certain clean energy standards.

"These efforts also will help position America to lead the world in clean energy deployment… This renewed partnership between the government and industry will ensure that the United States will continue to lead the age of AI," President Biden said in a **statement**.

The EO requires the Secretary of Defense and Secretary of Energy to identify three sites for AI data centers by February 28, 2025. Developers that build on these sites "will be required to bring online sufficient clean energy generation resources to match the full electricity needs of their data centers, consistent with applicable law."

The EO also directs agencies "to expedite the processing of permits and approvals required for the construction and operation of AI infrastructure on Federal sites." The Department of Energy will work to develop and upgrade transmission lines around the new sites and "facilitate [the] interconnection of AI infrastructure to the electric grid."

Private developers of AI data centers on federal sites are also subject to numerous lease obligations, including paying for the full cost of building and maintaining AI infrastructure and data centers, adhering to lab security and labor standards, and procuring certain clean energy generation resources.

Executive Order on Cybersecurity

On Thursday, President Biden signed an **Executive Order on Strengthening and Promoting Innovation in the Nation's Cybersecurity**. The EO directs the federal government to strengthen the cybersecurity of its federal systems and adopt more rigorous security and transparency standards for software providers and other third-party contractors. It directs various agencies — with some deadlines as soon as 30 days from the EO's issuance — to evaluate their cybersecurity systems, launch cybersecurity

pilot programs, and implement strengthened cybersecurity practices, including for communication and identity management systems.

The EO also aims to integrate AI into government cybersecurity operations. The EO directs the Secretary of Energy to launch a pilot program "on the use of AI to enhance the cyber defense of critical infrastructure in the energy sector." Within 150 days of the EO, various agencies shall also "prioritize funding for their respective programs that encourage the development of large-scale, labeled datasets needed to make progress on cyber defense research." Also, within 150 days of the EO, various agencies shall pursue research on a number of AI topics, including "human-AI interaction methods to assist defensive cyber analysis" and "methods for designing secure AI systems."

The Fate of President Biden's AI Actions Under a Trump Administration?

It remains an open question whether Biden's new AI infrastructure EO, cybersecurity EO, and chip export control rule will survive intact, be modified, or be eliminated under the Trump administration, which begins on Monday. What Trump decides to do with the new export control rule, in particular, may signal the direction of his administration's approach to AI. Trump may keep the export controls due to his stated commitment to win the AI race against China, or he may get rid of them or tone them down out of concerns that they overly burden US AI innovation and business.

We will continue to monitor, analyze, and issue reports on these developments. Please feel free to contact us if you have questions as to current practices or how to proceed.

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