

Commerce Department Adds Huawei and 68 Huawei Affiliates to Entity List

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International Trade Controls

The U.S. Department of Commerce yesterday issued a [Final Rule](#) adding Huawei Technologies Co., Ltd. (“Huawei”) and 68 non-U.S. Huawei affiliates to the Entity List maintained by the Commerce Department’s Bureau of Industry and Security (“BIS”). While the rule will not be published in the Federal Register until May 21, it was effective immediately upon release yesterday.

Pursuant to the rule, exports, reexports, and transfers (in-country) to Huawei and its listed affiliates of any item subject to the Export Administration Regulations (“EAR”) now require prior BIS licensing, even for non-sensitive “EAR99” items (e.g., ordinary commodity products). Items subject to the EAR include goods, software, and technology originating in or exported from the United States as well as non-U.S.-origin items that contain more than *de minimis* levels of controlled U.S.-origin content, as further described below. Moreover, license exceptions under the EAR are now suspended with regard to exports to Huawei and its listed affiliates, and BIS has instituted a license review policy of a presumption of denial of export license requests.

Basis for Entity List Designations

The Entity List, maintained as [Supplement No. 4 to Part 744 of the EAR](#), identifies legal and natural persons believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States.

BIS explains in the rule that it has reasonable cause to believe that Huawei and its listed affiliates have been or may become involved in such activities. As an illustrative example, the rule cites the superseding 13-count [indictment](#) against Huawei, [unsealed](#) this past January, accusing Huawei of willfully conducting and concealing millions of dollars’ worth of transactions in violation of U.S. economic sanctions against Iran. The indictment further accuses certain non-U.S. Huawei affiliates of having participated in the alleged criminal conduct. That alleged involvement of non-U.S. Huawei affiliates was the basis, according to the BIS rule, for designating 68 non-U.S. Huawei affiliates, along with Huawei, on the Entity List. These affiliates are located in the following 26 countries: Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Egypt, Germany, Hong Kong, Jamaica, Japan, Jordan, Lebanon, Madagascar, Netherlands, Oman, Pakistan, Paraguay, Qatar, Singapore, Sri Lanka, Switzerland, Taiwan, United Kingdom, and Vietnam.

Notably, as detailed in our earlier [update](#), the Huawei listing was announced on Tuesday, the same day President Trump issued an Executive Order empowering the Secretary of Commerce with broad authorities to secure the U.S. information and communications technology and services supply chain.

Huawei's Entity Listing Designations

The Entity List designation mandates BIS licensing for all exports, reexports, and transfers (in-country) to the listed Huawei entities of any item subject to the EAR. Moreover, license exceptions otherwise available under the EAR are suspended with respect to Huawei and BIS has instituted a license review policy of a presumption of denial for export license requests.

Following yesterday's rule, all goods, software, and technology that are subject to U.S. export jurisdiction—including common EAR99 items not identified on the EAR Commerce Control List—will require licensing prior to their supply to any of the listed Huawei entities. Pursuant to Part 734 of the EAR, items “subject to the EAR” include all items located in or exported from the United States, and all items produced in the United States, wherever located. Furthermore, non-U.S.-made items that contain more than *de minimis* amounts of controlled U.S.-origin content also are subject to the EAR.

Regarding *de minimis* thresholds, a non-U.S.-made item is typically subject to the EAR only when more than 25% of its value consists of “controlled U.S.-origin content.” Controlled U.S.-origin content for purposes of EAR *de minimis* calculations includes any content for which BIS licensing would be required, were that content to be exported or reexported independently to the non-U.S.-made item's country of destination. Non-U.S.-made items destined for Huawei in China now require BIS licensing if their value is made up of more than 25% U.S.-origin content, if that content is itself subject to BIS licensing requirements for export to or transfers in China.

Notwithstanding this general 25% *de minimis* threshold, non-U.S.-made items are deemed “subject to the EAR” if they contain *any* amount of certain types of U.S. content. Such content includes, for example, U.S.-origin components classified under a “600 series” or 9x515 Export Control Classification Number (“ECCN”), when destined for countries subject to U.S. arms embargos, such as China. There similarly are no *de minimis* levels for any non-U.S.-origin encryption technology that incorporates U.S.-origin encryption controlled under ECCN 5E002.

Finally, certain non-U.S.-produced items that meet the narrow conditions to constitute “direct products” of sensitive U.S. software or technology also are subject to the EAR, even if those non-U.S. items were produced and are located abroad and contain no or less than *de minimis* U.S. content. Additionally, items produced at a non-U.S. manufacturing plant or by a major manufacturing plant component can be subject to the EAR if the plant or plant component was a product of certain U.S. software or technology.

Items “subject to the EAR” under the criteria outlined above may no longer be exported from the United States, reexported from a third country, or transferred within a country to Huawei or any of its listed affiliates, unless a BIS license is first issued. As noted, however, license applications will be subject to a presumption of denial. In addition, release of any technology subject to the EAR to representatives of Huawei or its listed affiliates, wherever located, will now require prior BIS licensing.

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Such restrictions are formally limited only to the listed Huawei entities and their representatives, because Entity List designations do not automatically extend to non-listed subsidiaries or affiliates of listed persons. However, when dealing with a non-listed Huawei affiliate, companies should exercise heightened caution to avoid indirectly furnishing items subject to the EAR to Huawei.

The rule's "savings clause" permits delivery of items already *en route* to a port of export or reexport, provided those items were on actual order by Huawei and do not otherwise require licensing from BIS or are being exported/reexported under a license exception.

It is also expected, but not guaranteed, that BIS will issue a temporary (e.g., 90-day) general license or license exception in order to allow for certain forms of network upgrades, maintenance, equipment support, or similar activities that suppliers may already be obligated to perform under contract with Huawei. But at present, unless and until such a license or license exception is issued, the rule provides that licensing for Huawei and its listed affiliates remains necessary for the entire universe of items subject to the EAR, forecloses use of license exceptions, and institutes a license review policy of a presumption of denial of all export license requests.

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We will continue monitoring developments in this area and would be pleased to assist you further in understanding whether or to what extent you or your business may be impacted by these developments.

If you have any questions, please do not hesitate to contact any of the following members of our [International Trade Controls](#) practice:

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