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Commerce Levels Playing Field to Support U.S. Stakeholder Participation in International Standards Setting Activities

WASHINGTON, D.C. – The Commerce Department’s Bureau of Industry and Security (BIS) has issued an interim final rule revising the Export Administration Regulations (EAR) to authorize the release of certain technology and software in the context of standards setting and development in standards organizations. The changes made in this interim final rule address concerns from U.S. industry and other stakeholders about whether BIS licenses are required to release low-level technology for legitimate standards activities to parties on the Entity List stemming from the listing of Huawei and a number of its non-U.S. affiliates.

“U.S. stakeholders need to be fully engaged in international standards organizations, particularly where the critical but sometimes invisible standards that they set have important national security as well as commercial implications,” **said Under Secretary of Commerce for Industry and Security Alan Estevez.** “Today’s rule provides much needed clarification to U.S. industry and other organizations that will allow for continued U.S. leadership in these critical bodies.”

“International standards serve as the building blocks for product development and help ensure the functionality, interoperability, and safety of products,” **said Assistant Secretary of Commerce for Export Administration Thea D. Rozman Kendler.** “Today’s rule continues to prevent technology transfers that harm our national security while ensuring that U.S. companies fully participate and lead in standards development. In addition to consulting with our interagency partners to craft this rule, I want to especially thank the National Institute of Standards and Technology (NIST) for sharing their expertise.”

On June 18, 2020, BIS published an interim final rule ([link](#)) with a request for comments that authorized the release of certain items subject to the EAR to certain entities on the Entity List without a license, when that release occurs in a standards organization environment. The comments received by BIS advised that the changes promulgated in the June 18 interim final rule did not resolve the uncertainty of U.S. industry regarding participation in standards organizations that included Entity Listed entities. Uncertainty created by not knowing whether a BIS license is required to release low-level technology for legitimate standards activities undermined U.S. participation and leadership in these activities.

Today's rule is consistent with public comments received from the June 2020 interim final rule, specifically that additional actions are needed to protect U.S. technology without discouraging the full participation of U.S. companies in international standards development efforts. The rule amends the EAR to authorize the release of certain technology and software subject to the EAR to entities on the Entity List without a license when that release occurs in a standards-related activity with the intent that the resulting standard will be "published." The requirement that the standard be published undermines any risk of unwanted transfer of proprietary technology.

The rule also revises the terms used in the EAR to describe the actions permissible under the authorization. As a result of today's interim final rule, the release of EAR99 and Anti-Terrorism (AT) only controlled "software" and "technology" as well as certain "software" and "technology" for specified cryptographic functionality are included in the scope of the authorization. Today's rule also defines the term "standards related activity" to describe the actions permissible under the authorization. Lastly, today's rule amends the scope of the authorization to apply to all entities listed in the Entity List. The rule only addresses Entity List-related licensing requirements and other export controls may apply and require authorization from BIS. BIS is seeking public comments on the impact of these additional controls on participation in standards-related activity.

The text of the interim final rule is available on the Federal Register's website at this link [here](#).

For more information, visit www.bis.doc.gov.

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