

# INTERNATIONAL BUSINESS ALERT

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## **BIS clarifies its Huawei ban to allow release of technology for standards developments**

On and effective June 18, 2020, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) published an interim final rule, [Release of "Technology" to Certain Entities on the Entity List in the Context of Standards Organizations](#), in the federal register. The June 18 Rule amends the Export Administration Regulations (EAR), clarifying that the existing Huawei ban does not extend to the release of certain kinds of technology for specified uses relating to Huawei Technologies Co., Ltd. (Huawei) and many of its affiliates in China and around the world. The BIS is accepting comments from interested parties on the impact of the rule change on or before Aug. 17, 2020.

Under this June 18 Rule, companies are authorized to release certain U.S. technology to Huawei and its affiliates on the Entity List without a license, if such release is made for the purpose of contributing to the revision or development of a "standard" in a "standards organization." To understand the implication of this June 18 Rule, it is critical to understand the definition of certain terms under this rule.

### **What is "Standard?"**

The June 18 Rule defines the term "standard" as "[t]his term is equivalent to 'standard' or 'technical standard' as defined in Office of Management and Budget Circular A-119 (Rev. 2016) (81 FR 4673 [Jan. 27, 2016]), 'Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities' section 2.a..." In turn, under section 2.a of the Office of Management and Budget Circular A-119 (OMB Circular A-119), the term "standard" or "technical standard" is defined to include all of the following:

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- Common and repeated use of rules, conditions, guidelines or characteristics for products or related processes and production methods and related management system practices;
- The definition of terms; classifications of components; delineation of procedures; specification of dimensions, materials, performance, designs or operations; measurement of quality and quantity in describing materials, processes, products, systems, services or practices; test methods and sampling procedures; formats for information and communication exchange; or descriptions of fit and measurements of size or strength; and
- Terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production.

### **What is "Standards Organization?"**

The term "standards organization" is defined under the June 18 Rule as being equivalent to a "voluntary consensus standards body" as defined in the OMB Circular A-119. Under OMB Circular A-119, a "voluntary consensus standards body" is defined as a type of association, organization or technical society that plans, develops, establishes or coordinates voluntary consensus standards using a development process that includes the following attributes or elements:

- Openness: The procedures or processes used are open to interested parties. Such parties are provided meaningful opportunities to participate in standards development on a nondiscriminatory basis. The procedures or processes for participating in standards development and for developing the standard are transparent.
- Balance: The standards development process should be balanced. Specifically, there should be meaningful involvement from a broad range of parties, with no single interest dominating the decision-making.
- Due process: Due process shall include documented and publicly available policies and procedures, adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views.
- Appeals process: An appeals process shall be available for the impartial handling of procedural appeals.
- Consensus: Consensus is defined as general agreement, but not necessarily unanimity. During the development of consensus, comments and objections are considered using fair, impartial, open and transparent processes.

### **What kind of technology can be released?**

The June 18 Rule authorizes the release of technology for the required

purpose and without the need to obtain a license, including ones designated as EAR99 or controlled on the Commerce Control List only for anti-terrorism reasons.

**Take away**

This June 18 Rule authorizes the release of certain technology to Huawei and its affiliates in legitimate standards-development contexts without a license, and is generally welcomed by many companies. The BIS explained in its [press release](#) on June 15, 2020, the purpose of the rule is to “ensur[e] U.S. industry’s ability to more fully contribute to standards-development activities in the telecommunications sector” and to “ensure Huawei’s placement on the Entity List in May 2019 does not prevent American companies from contributing to important standards-developing activities despite Huawei’s pervasive participation in standards-development organizations.”

It is important to note that this June 18 Rule, while it releases certain technology to Huawei and its affiliates in the context of standards setting, it does not allow the release of technology for commercial use.

Impacted parties should consider filing comments on or before August 17, 2020. Such comments must be filed via [regulations.gov](https://www.regulations.gov) by searching docket number 200611–0158.

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