

On June 24, 2019, the US Department of Commerce, Bureau of Industry and Security (BIS) published in the *Federal Register* a [Final Rule](#) designating five entities, all located in China, to the Entity List.

The five entities are Chengdu Haiguang Integrated Circuit,¹ Chengdu Haiguang Microelectronics Technology,² Higon,³ Sugon⁴ and Wuxi Jiangnan Institute of Computing Technology⁵ (collectively, the June 24 Listed Companies). According to the *Federal Register Notice*, Sugon and the Wuxi Jiangnan Institute of Computing Technology are lead developers “of exascale high performance computing.” Sugon is the majority owner of Higon, which has ownership interest in Chengdu Haiguang Integrated Circuit and Chengdu Haiguang Microelectronics Technology.

Effective date. This rule is effective as of June 24, 2019.

Savings clause. Shipments of items that were *en route* aboard a carrier to a port of export or reexport, as of the effective date of the Final Rule, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Impact of designation on the Entity List. Designation of an organization on the Entity List does not block all dealings with the organization, as would occur for an organization designated as a Specially Designated National by the Office of Foreign Assets Control. The Entity List is more targeted in its application. Section 744.16(a) of the Export Administration Regulations (EAR) provides that no person may “export, reexport, or transfer (in-country) items specified on the Entity List to listed entities without a license from BIS.” In the case of the June 24 Listed Companies, the “items specified” are all items subject to the EAR. Therefore, the designation prohibits all exports, reexports or transfers to the June 24 Listed Companies of any item subject to the EAR by any person – both US persons and non-US persons.

Exports from the US. The designation prohibits all exports from the US to the June 24 Listed Companies. Every item in the US (and not under the jurisdiction of another agency) is subject to the EAR. This includes items of foreign origin in the US temporarily. For example, the designation would prohibit the return of non-US origin equipment to the June 24 Listed Companies.

Foreign-made items. While the designation applies to all items in the US, it does not apply to all foreign-made items. Only foreign-made items that are “subject to the EAR” are restricted by the designation. If the foreign-made item is not subject to the EAR, it can be delivered from a third country to the June 24 Listed Companies by US persons or non-US persons. Importantly, Entity List restrictions apply only to items subject to the EAR.

Subject to the EAR. All items in the US and foreign-made items containing more than a *de minimis* amount of controlled US content are subject to the EAR, but if the controlled US content is *de minimis*, the foreign-made item is not subject to the EAR. The *de minimis* calculation involves a comparison of the value of the controlled US content in relation to the value of the product to be delivered to one of the June 24 Listed Companies. Generally, a foreign-made product is not subject to the EAR if the controlled US content is equal to or less than 25% of the value of the foreign-made product. A US item is controlled content if it would require a license for export to the destination for the foreign-made product. EAR99 content is not controlled content for China or other locations of the June 24 Listed Companies. As a result, many foreign-made products supplied to the June 24 Listed Companies are not restricted by the Entity List designation, even if they do contain US content. Even a substantial amount of EAR99 content from the US would not cause the foreign-made product to be subject to the EAR when the end destination is a June 24 Listed Company.

Continuation of services and support. In addition to prohibiting exports, reexports and transfers of new products to the June 24 Listed Companies, the Entity List designation prohibits supplying replacement parts that are subject to the EAR and providing services that would amount to a deemed export or reexport of technology subject to the EAR.

Payment for items delivered. The EAR does not prohibit suppliers from being paid for items previously delivered to the June 24 Listed Companies.

Possibility of obtaining a license. While the EAR does contemplate that a license could be obtained to export, reexport or transfer items subject to the EAR to one of the June 24 Listed Companies, the Entity List establishes a policy of a presumption of denial for the license application.

¹ Aliases include Hygon and Chengdu Haiguang Jincheng Dianlu Sheji.

² Aliases include HMC and Chengdu Haiguang Wei Dianzi Jishu.

³ Aliases include Higon Information Technology, Haiguang Xinxi Jishu Youxian Gongs, THATIC, Tianjing Haiguang Advanced Technology Investment, and Tianjing Haiguang Xianjin Jishu Touzi Youxian Gongs.

⁴ Aliases include Dawning, Dawning Information Industry, Sugon Information Industry, Shuguang, Shuguang Information Industry, Zhongke Dawn, Zhongke Shuguang, Dawning Company, and Tianjin Shuguang Computer Industry.

⁵ Aliases include Jiangnan Institute of Computing Technology and JICT.

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