

Commerce Department Consolidates and Clarifies the Foreign-Made Direct Product Rules Amid Rising Tensions With Russia

February 7, 2022

On February 3, 2022, the Commerce Department published a [final rule](#) amending the Export Administration Regulations (“EAR”) to clarify the scope of the foreign-direct product rule (“FDPR”). The FDPR expands the jurisdiction of the EAR, the principal set of regulations that control the export, re-export, and transfers of dual use U.S.-origin items.

Under the FDPR, the EAR controls *foreign-produced* items that are a (1) direct product of certain U.S.-origin technology or software controlled for national security reasons or (2) are produced by plants, or a major components of plants, that are a direct product of U.S.-origin technology. The FDPR further restricts the receipt of certain foreign-produced items (i.e., those incorporating U.S. technology or software or produced by plants or major components of plants) by designated entities on the Commerce Department’s Entity List, primarily targeting primarily Huawei and its affiliates.

Previously, the FDPR appeared in two separate parts of the EAR, General Prohibition 3 and the Entity List. The amendments consolidate and place the FDPR in the scope section of the EAR to “clarif[y] that [the FDPR] are used to determine if a foreign-produced item is subject to, and thus within the scope of, the EAR.” The Commerce Department also simplified the text of the FDPR to facilitate adherence to the rule and makes clear which terms have special definitions under the EAR.

The Commerce Department’s amendments to re-organize, clarify, and correct the FDPR come amid rising tensions between the United States and Russia. In 2020, the Commerce Department [expanded the FDPR to address Huawei’s threats to U.S. national security](#) and essentially prevented the company from receiving any foreign-produced items that incorporated or was produced with controlled U.S.-origin technology or software, unless a license was obtained. The United States may take a similar approach to Russian entities and thereby hinder production in key sectors that rely on U.S.-origin items, such as defense and intelligence.

Companies should monitor developments in this space. If the United States takes further action under the FDPR, companies should conduct supply-chain due diligence to determine if their products are subject to the FDPR and, if so, whether they involve any targeted parties on the Entity List.