



**BILLING CODE 3510-33-P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 744**

**[Docket No. 170109042-7255-01]**

**RIN 0694 – AH30**

**Removal of Certain Persons from the Entity List; Addition of a Person to the Entity List; and EAR Conforming Change**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by removing two persons listed under the destination of China from the Entity List. The two removals are the result of a request for removal received by BIS pursuant to the section of the EAR used for

requesting removal or modification of an Entity List entry and a review of information provided in the removal request in accordance with the procedure for requesting removal or modification of an Entity List entity. In light of the recent settlement of administrative and criminal enforcement actions against ZTE Corporation and ZTE Kangxun, the End-User Review Committee (ERC) has determined that these two persons being removed have performed their undertakings to the U.S. Government in a timely manner and have otherwise cooperated with the U.S. Government in resolving the matter which led to the two entities' listing.

This final rule also adds one person to the Entity List. This person who is added to the Entity List has been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. This person will be listed on the Entity List under the destination of China.

Lastly, this final rule makes a conforming change to the EAR as a result of the removal of these two persons from the Entity List.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Email: ERC@bis.doc.gov.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably 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. The EAR imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to those listed. The “license review policy” for each listed entity or other person is identified in the License Review Policy column on the Entity List and the impact on the availability of license exceptions is described in the *Federal Register* notice adding entities or other persons to the Entity List. BIS places entities and other persons on the Entity List pursuant to sections of part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

### **ERC Entity List Decisions**

### *Removals from the Entity List*

This rule implements a decision of the ERC to remove the following two entries from the Entity List: Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun Telecommunications Ltd. These two entities were added to the Entity List on March 8, 2016 (see 81 FR 12006).

The U.S. Government recently reached an agreement with ZTE Corporation and ZTE Kangxun for the settlement of administrative charges and entry of a guilty plea in a criminal case against the companies. On March 7, 2017, Secretary of Commerce Wilbur L. Ross, Jr., issued a statement regarding the settlement and guilty plea, which resulted in a very substantial monetary penalty, intrusive independent monitoring, and additional suspended penalties that will be imposed if ZTE fails to meet its obligations or further violates U.S. export controls.

In light of the settlement, the ERC has determined that ZTE Corporation and ZTE Kangxun have performed their undertakings to the U.S. Government in a timely manner and have otherwise cooperated with the U.S. Government in resolving the matter which led to the two entities' listing. Therefore, the ERC has decided to remove these two entities from the Entity List.

This final rule implements the decision to remove the following two entities located in China from the Entity List:

### **China**

(1) Zhongxing Telecommunications Equipment (ZTE) Corporation,

ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China; *and*

(2) ZTE Kangxun Telecommunications Ltd.,

2/3 Floor, Suite A, ZTE Communication Mansion Keji (S) Road, Hi-New Shenzhen, 518057  
China.

The removal of the persons referenced above, which was approved by the ERC, eliminates the existing license requirements in Supplement No. 4 to part 744 for exports, reexports and transfers (in-country) to these entities. However, the removal of these persons from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of an entity from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, “you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.” Additionally, this removal does not relieve persons of their obligation to apply for export, reexport or in-country transfer licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, “BIS’s ‘Know Your Customer’ Guidance and Red Flags,” when persons are involved in transactions that are subject to the EAR.

*Addition to the Entity List*

This rule implements the decision of the ERC to add one person to the Entity List. This person is being added on the basis of § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The person added to the Entity List will be listed under the destination of China.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add this person to the Entity List. Under that paragraph, persons and those acting on behalf of such persons may be added to the Entity List if there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States. Paragraphs (b)(1) through (5) of § 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States.

Pursuant to § 744.11(b) of the EAR, the ERC determined that this person, Shi Lirong, located in the destination of China, be added to the Entity List for actions contrary to the national security or foreign policy interests of the United States. The ERC determined that there is reasonable cause to believe, based on specific and articulable facts, that Shi Lirong has been involved in actions contrary to the national security or foreign policy interests of the United States. Specifically, Shi Lirong was the CEO of ZTE Corporation at the time the ZTE documents that contributed to ZTE's listing were signed. Shi Lirong signed and approved the document "Report Regarding Comprehensive Reorganization and Standardization of the Company Export Control Related Matters," which described how ZTE planned and organized a

scheme to establish, control and use a series of “detached” (i.e., shell) companies to illicitly reexport controlled items to Iran in violation of U.S. export control laws.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of this person raises sufficient concern that prior review of exports, reexports or transfers (in-country) of items subject to the EAR involving this person, and the possible imposition of license conditions or license denials on shipments to the person, will enhance BIS’s ability to prevent violations of the EAR. Therefore, this person is being added to the Entity List.

For this person added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to this person or in which such person acts as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to this person being added to the Entity List in this rule.

This final rule adds the following person to the Entity List:

**China**

(1) Shi Lirong,

Yuanzhong Garden Tower A, Room 26A, Futian, Shenzhen, China; *and*

Xinghai Mingcheng, 2nd Floor, Shenzhen, China.

### *Conforming EAR Change*

This final rule removes Supplement No. 7 to part 744 – Temporary General License, which was originally added to the EAR in a final rule on March 24, 2016 (81 FR 15633). The March 24 final rule amended the EAR by adding Supplement No. 7 to part 744 to create a temporary general license that returned, until June 30, 2016, the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to ZTE Corporation and ZTE Kangxun to those which were in effect prior to their addition to the Entity List on March 8, 2016. BIS subsequently extended the validity date of the temporary general license on four occasions (June 28, 2016 (81 FR 41799), August 19, 2016 (81 FR 55372), November 18, 2016 (81 FR 81663), and February 24, 2017 (82 FR 11505)), resulting in the current validity end-date of March 29, 2017.

As described above under the section *Removals from the Entity List*, this final rule removes the two entities identified in the temporary general license from the Entity List. Therefore, this final rule removes as a conforming change Supplement No. 7 to part 744 because it is no longer needed.

### **Export Administration Act of 1979**

Although the Export Administration Act of 1979 expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic

Powers Act. BIS continues to carry out the provisions of the Export Administration Act of 1979, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

### **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to [Jasmeet\\_K.\\_Seehra@omb.eop.gov](mailto:Jasmeet_K._Seehra@omb.eop.gov), or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (APA) (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the person being added to the Entity List. If the effective date of this rule were delayed to allow for notice and comment, then the person being added to the Entity List by this action would be able to continue receiving items subject to the EAR without a license, to the detriment of the national security and foreign policy interests of the United States. In addition, publishing a proposed rule would give this party notice of the U.S. Government's intention to place him on the Entity List and would create an incentive for this person to accelerate his receipt of items subject to the EAR in order to conduct activities that are contrary to the national security or foreign policy interests of the United States, to set up additional aliases, change addresses, and/or to take other measures to try to limit the impact of the listing on the Entity List after a final rule is published.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not

applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

5. For the two persons removed from the Entity List in this final rule and for the conforming EAR change to remove Supplement No. 7 to part 744, BIS finds good cause, pursuant to the APA, 5 U.S.C. 553(b)(B), to waive requirements that this rule be subject to notice and the opportunity for public comment because it would be contrary to the public interest.

In determining whether to grant a request for removal from the Entity List, a committee of U.S. Government agencies (the End-User Review Committee (ERC)) evaluates information about and commitments made by listed persons requesting removal from the Entity List, the nature and terms of which are set forth in 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (72 FR 31005 (June 5, 2007) (proposed rule), and 73 FR 49311 (August 21, 2008) (final rule)). These two removals have been made within the established regulatory framework of the Entity List. If the rule were to be delayed to allow for public comment, U.S. exporters may face unnecessary economic losses as they turn away potential sales to the entities removed by this rule because the customer remained a listed person on the Entity List even after the ERC approved the removal pursuant to the regulatory process established by the rule published at 73 FR 49311 on August 21, 2008. By publishing without prior notice and comment, BIS allows the applicants to receive U.S. exports immediately because the applicants already have received approval by the ERC pursuant to 15 CFR part 744, Supplement No. 5, as noted in 15 CFR 744.16(b).

Removals from the Entity List granted by the ERC involve interagency deliberation and result from review of public and non-public sources, including sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is extensively reviewed according to the criteria for evaluating removal requests from the Entity List, as set out in 15 CFR part 744, Supplement No. 5 and 15 CFR 744.16(b). For reasons of national security, BIS is not at liberty to provide to the public the detailed information on which the ERC relied to make the decisions to remove these entities. In addition, the information included in the removal request is information exchanged between the applicant and the ERC, which by law (section 12(c) of the Export Administration Act of 1979), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such removal requests.

Additionally, section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the Federal Register. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(1) because this rule is a substantive rule which relieves a restriction. This rule's removal of two persons from the Entity List removes requirements (the Entity-List-based license requirement and limitation on use of license exceptions) related to these two persons.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not

applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

### **List of Subjects in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730-774) is amended as follows:

#### **PART 744 – [AMENDED]**

1. The authority citation for 15 CFR part 744 is revised to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016); Notice of November 8, 2016, 81 FR 79379 (November 10, 2016); Notice of January 13, 2017, 82 FR 6165 (January 18, 2017).

2. Supplement No. 4 to Part 744 is amended:

a. By removing, under China, two Chinese entities, “Zhongxing Telecommunications Equipment (ZTE) Corporation, ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan

District, Shenzhen, China”; and “ZTE Kangxun Telecommunications Ltd., 2/3 Floor, Suite A, ZTE Communication Mansion Keji (S) Road, Hi-New Shenzhen, 518057 China ”; and

b. By adding, under China, one Chinese entity.

The addition reads as follows:

**Supplement No. 4 to Part 744 – Entity List**

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Country	Entity	License requirement	License review policy	Federal Register citation
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CHINA, PEOPLE’S REPUBLIC OF	*****			
	Shi Lirong, Yuanzhong Garden Tower A, Room 26A, Futian, Shenzhen, China; <i>and</i> Xinghai Mingcheng, 2nd Floor, Shenzhen, China.	For all items subject to the EAR. (See §744.11 of the EAR).	Presumption of denial.	82 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]
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**Supplement No. 7 to Part 744 – [REMOVED]**

3. Remove Supplement No. 7 to Part 744.

Dated: March 24, 2017

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration

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