

(B) Cloud-based or distributed computing and data storage;

(C) Managed services; and

(D) Content delivery services;

(iv) Any of the following ICTS products, if greater than one million units have been sold to U.S. persons at any point over the twelve (12) months prior to an ICTS Transaction:

(A) Internet-enabled sensors, webcams, and any other end-point surveillance or monitoring device;

(B) Routers, modems, and any other home networking device; or

(C) Drones or any other unmanned aerial system;

(v) Software designed primarily for connecting with and communicating via the internet that is in use by greater than one million U.S. persons at any point over the twelve (12) months preceding an ICTS Transaction, including:

(A) Desktop applications;

(B) Mobile applications;

(C) Gaming applications; and

(D) Web-based applications; or

(vi) ICTS integral to:

(A) Artificial intelligence and machine learning;

(B) Quantum key distribution;

(C) Quantum computing;

(D) Drones;

(E) Autonomous systems; or

(F) Advanced Robotics.

(b) This part does not apply to an ICTS Transaction that:

(1) Involves the acquisition of ICTS items by a United States person as a party to a transaction authorized under a U.S. government-industrial security program; or

(2) The Committee on Foreign Investment in the United States (CFIUS) is actively reviewing, or has reviewed, as a covered transaction or covered real estate transaction or as part of such a transaction under section 721 of the Defense Production Act of 1950, as amended, and its implementing regulations.

(c) (c) Notwithstanding the exemption in paragraph (b)(2) of this section, ICTS Transactions conducted by parties to transactions reviewed by CFIUS that were not part of the covered transaction or covered real estate transaction reviewed by CFIUS remain fully subject to this part.

§ 7.4 Determination of foreign adversaries.

(a) The Secretary has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule:

(1) The People's Republic of China, including the Hong Kong Special Administrative Region (China);

(2) Republic of Cuba (Cuba);

(3) Islamic Republic of Iran (Iran);

(4) Democratic People's Republic of Korea (North Korea);

(5) Russian Federation (Russia); and

(6) Venezuelan politician Nicolás Maduro (Maduro Regime).

(b) The Secretary's determination of foreign adversaries is solely for the purposes of the Executive Order, this rule, and any subsequent rule promulgated pursuant to the Executive Order. Pursuant to the Secretary's discretion, the list of foreign adversaries will be revised as determined to be necessary. Such revisions will be effective immediately upon publication in the FEDERAL REGISTER without prior notice or opportunity for public comment.

(c) The Secretary's determination is based on multiple sources, including:

(1) National Security Strategy of the United States;

(2) The Director of National Intelligence's 2016-2019 Worldwide Threat Assessments of the U.S. Intelligence Community;

(3) The 2018 National Cyber Strategy of the United States of America; and

(4) Reports and assessments from the U.S. Intelligence Community, the U.S. Departments of Justice, State and Homeland Security, and other relevant sources.

(d) (d) The Secretary will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend this list. Any amendment to this list will apply to any ICTS Transaction that is initiated,

§7.5

pending, or completed on or after the date that the list is amended.

§7.5 Effect on other laws.

Nothing in this part shall be construed as altering or affecting any other authority, process, regulation, investigation, enforcement measure, or review provided by or established under any other provision of Federal law, including prohibitions under the National Defense Authorization Act of 2019, the Federal Acquisition Regulations, or IEPPA, or any other authority of the President or the Congress under the Constitution of the United States.

§7.6 Amendment, modification, or revocation.

Except as otherwise provided by law, any determinations, prohibitions, or decisions issued under this part may be amended, modified, or revoked, in whole or in part, at any time.

§7.7 Public disclosure of records.

Public requests for agency records related to this part will be processed in accordance with the Department of Commerce's Freedom of Information Act regulations, 15 CFR part 4, or other applicable law and regulation.

Subpart B—Review of ICTS Transactions

§7.100 General.

In implementing this part, the Secretary of Commerce may:

(a) Consider any and all relevant information held by, or otherwise made available to, the Federal Government that is not otherwise restricted by law for use for this purpose, including:

- (1) Publicly available information;
- (2) Confidential business information, as defined in 19 CFR 201.6, or proprietary information;
- (3) Classified National Security Information, as defined in Executive Order 13526 (December 29, 2009) and its predecessor executive orders, and Controlled Unclassified Information, as defined in Executive Order 13556 (November 4, 2010);
- (4) Information obtained from state, local, tribal, or foreign governments or authorities;

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(5) Information obtained from parties to a transaction, including records related to such transaction that any party uses, processes, or retains, or would be expected to use, process, or retain, in their ordinary course of business for such a transaction;

(6) Information obtained through the authority granted under sections 2(a) and (c) of the Executive Order and IEPPA, as set forth in U.S.C. 7.101;

(7) Information provided by any other U.S. Government national security body, in each case only to the extent necessary for national security purposes, and subject to applicable confidentiality and classification requirements, including the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector and the Federal Acquisitions Security Council and its designated information-sharing bodies; and

(8) Information provided by any other U.S. Government agency, department, or other regulatory body, including the Federal Communications Commission, Department of Homeland Security, and Department of Justice;

(b) Consolidate the review of any ICTS Transactions with other transactions already under review where the Secretary determines that the transactions raise the same or similar issues, or that are otherwise properly consolidated;

(c) In consultation with the appropriate agency heads, in determining whether an ICTS Transaction involves ICTS designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary, consider the following:

- (1) Whether the person or its suppliers have headquarters, research, development, manufacturing, test, distribution, or service facilities, or other operations in a foreign country, including one controlled by, or subject to the jurisdiction of, a foreign adversary;
- (2) Ties between the person—including its officers, directors or similar officials, employees, consultants, or contractors—and a foreign adversary;
- (3) Laws and regulations of any foreign adversary in which the person is headquartered or conducts operations,