

Commerce Department Issues Temporary General License Authorizing Certain Transactions with Huawei and its Designated Affiliates

May 21, 2019

Key Points:

- On May 20, 2019, the U.S. Department of Commerce published a 90-day **Temporary General License** (TGL) authorizing limited categories of exports, reexports, or transfers that are otherwise prohibited pursuant to the addition of Huawei and related entities to the **Entity List**.
- The TGL authorizes specific activities (1) necessary to support existing networks and equipment; (2) necessary to provide service and support to existing models of Huawei handsets; (3) involving the disclosure of information regarding security vulnerabilities of Huawei items; and (4) necessary for the development of 5G standards as part of an international standards body. The wording of the authorizations are more complex than this summary and require careful examination with respect to any particular transaction.
- The TGL requires the entity exporting, reexporting, or transferring items subject to the EAR under the TGL to create a certification describing why the activity is authorized by the TGL.

Background

On May 16, 2019, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) published a "final rule" stating that Huawei and 68 other companies, mostly its non-U.S. affiliates worldwide, had been added to the Entity List. **Commerce has stated** that the rule was effective on May 16, 2019 at 4:15 pm Eastern Time. The rule was officially published in the **Federal Register** today. Entity List actions such as this one prohibit without a license from BIS exports, reexports, and transfers to a listed entity of commodities, software, and technology "**subject to the EAR.**"

Temporary General License

On May 21, 2019, BIS published a Temporary General License that authorizes the following types of actions that are otherwise prohibited by the addition of Huawei and related entities to the Entity List:

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1. Engagement in “transactions” “necessary to maintain and support existing and currently fully operational networks and equipment, including software updates and patches, subject to legally binding contracts and agreements executed between Huawei and third parties or the sixty-eight non-U.S. Huawei affiliates
2. and third parties on or before May 16, 2019.”
3. Engagement in “transactions” “necessary to provide service and support, including software updates or patches to existing Huawei handsets.” This authorization is “limited to models of Huawei handsets that were available to the public on or before May 16, 2019.”
4. “Disclosure to Huawei, and/or the sixty-eight non-U.S. affiliates of information regarding security vulnerabilities in items owned, possessed or controlled by Huawei or any of the sixty-eight non-U.S. affiliates when related to the process of providing ongoing security research critical to maintaining the integrity and reliability of existing and currently fully operational networks and equipment.”
5. Engagement “with Huawei and/or the sixty-eight non-U.S. affiliates as necessary for the development of 5G standards as part of a duly recognized international standards body.”

The TGL is effective from May 20, 2019, to August 19, 2019. All other licensing requirements in the Export Administration Regulations (EAR), including end-use and end-user restrictions, remain in place. Moreover, if an export, reexport or transfer (in-country) required a license to Huawei prior to the entity designation, that export would not be eligible for the TGL. The TGL does not authorize any activities or transactions with Cuba, Iran, North Korea, Sudan, or Syria, or persons therefrom.

The notice also requires exporters, reexporters, and persons transferring (in-country) items subject to the EAR under the TGL to create and keep a record of a certification that the activity was authorized by the TGL.

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