

## Commerce Extends and Revises Temporary General License Authorizing Specified Transactions with Huawei and its Affiliates; Adds Additional Huawei Entities to Entity List

August 20, 2019

### Key Points

- The Commerce Department's Bureau of Industry and Security (BIS) has added 46 additional Huawei affiliates to the Entity List. The export, reexport, and transfer to these entities of commodities, software, and technology subject to the Export Administration Regulations (EAR) is now also prohibited without an export license.
- BIS also extended until November 18, 2019 a revised and narrowed Temporary General License (TGL) authorizing exports, reexports, and transfers to Huawei and other listed affiliates of specific types of items that are relevant to third parties.
- However, before one may ship an item subject to the EAR under the amended TGL, the Huawei entity that would receive the items must first certify how the transaction satisfies the TGL's terms and commit to comply with the EAR's recordkeeping provisions.
- BIS removed the authorization in the first TGL to engage in otherwise prohibited transactions with the Huawei listed entities in the development of 5G standards, noting that existing provisions of the EAR suffice for purposes of addressing the application of the Entity List-based license requirements to activities in connection with standards development bodies. BIS issued an advisory opinion in its FAQs under "Published Technology and Software" relating to standards development activities.
- BIS also amended, defined, and revised several other aspects of the TGL, including prohibiting the export of software under the TGL that would "enhance the functional capacities" of the original software or equipment already in Huawei's possession.
- BIS did not announce the issuance of any individual licenses authorizing exports to Huawei or other listed entities in order to implement the President's G-20 directive on the topic.

### Contact Information

If you have any questions concerning this alert, please contact:

#### Shiva Aminian

Partner  
saminian@akingump.com  
Los Angeles  
+1 310.552.6476

#### Christian C. Davis

Partner  
chdavis@akingump.com  
Washington D.C.  
+1 202.887.4529

#### Mahmoud Baki Fadlallah

Partner  
mfadlallah@akingump.com  
Dubai  
+971 4.317.3030

#### Thomas J. McCarthy

Partner  
tmccarthy@akingump.com  
Washington D.C.  
+1 2025.887.4047

#### Jonathan C. Poling

Partner  
jpoling@akingump.com  
Washington D.C.  
+1 202.887.4029

#### Tatman R. Savio

Registered Foreign Lawyer  
tatman.savio@akingump.com  
Hong Kong  
+852 3694.3015

- **In announcing the TGL amendment**, Secretary of Commerce Wilbur Ross stated, “as we continue to urge consumers to transition away from Huawei’s products, we recognize that more time is necessary to prevent any disruption.”

## Background

On May 16, 2019, the U.S. Department of Commerce’s BIS added Huawei and 68 of Huawei’s non-U.S. affiliates to its Entity List. As a result of this designation, all commodities, software, and technology “subject to the Export Administration Regulations” require a license to be exported, reexported, or transferred (in-country) to a listed entity.

Additionally, on May 21, 2019, BIS published a TGL, effective May 20, 2019, that authorized specified actions that were otherwise prohibited by the addition of Huawei and related entities to the Entity List. **As previously reported**, the May 20 TGL authorized:

- 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 and third parties on or before May 16, 2019.”
- 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.”
- “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.”
- 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.”

## Extension and Revision of the Temporary General License

On August 19, 2019, BIS published as a Public Inspection copy a **final rule** revising the May 20th TGL. The revised TGL extends the expiration date from August 19, 2019, to November 18, 2019, subject to the changes and clarifications discussed below.

All other licensing requirements in the 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 under the first TGL, that export will not be eligible under the amended TGL. Further, the amended TGL does not authorize any activities or transactions with Cuba, Iran, North Korea, Sudan, or Syria, or persons therefrom.

## TGL Changes and Clarifications

The August 19 rule revises the prior TGL as follows:

- **Certification statement.** The amended TGL adds a requirement that, prior to export, the exporter, reexporter, or transferor must obtain a certification statement

**Kevin J. Wolf**  
Partner  
kwolf@akingump.com  
Washington D.C.  
+1 202.887.4051

**Steve Emme**  
Senior Counsel  
semme@akingump.com  
Washington D.C.  
+1 202.887.4368

**Jaelyn Edwards Judelson**  
Counsel  
jjudelson@akingump.com  
Los Angeles  
+1 310.552.6477

**Kimberly M. Myers**  
Counsel  
kmyers@akingump.com  
Washington D.C.  
+1 202.887.4423

**Chris Chamberlain**  
Associate  
cchamberlain@akingump.com  
Washington D.C.  
+1 202.887.4308

**Ursula R. Rothrock**  
Associate  
urothrock@akingump.com  
Los Angeles  
+1 310.229.1077

**Johann Strauss**  
Associate  
jstrauss@akingump.com  
Dubai  
+971 4.317.3040

from the listed Huawei entity that is to receive the items along with any “additional support documentation” needed to substantiate the certification statement from the listed Huawei entity. The “additional support documentation” refers only to the authorization for continued operation of existing networks and equipment, as explained in more detail below. The amended TGL removes the previous requirement that the exporter, reexporter, or transferor create and maintain a certification statement.

- BIS also includes details on the information that must be in the required certification from the designated Huawei entity(ies). Specifically, all Huawei entities that receive items under the amended TGL must be listed (including physical addresses, telephone number, email addresses, website, and name and title of individual signing the certification). In addition, the certification must include a complete list of items (and the associated Export Control Classification Numbers (ECCNs) or designation (if EAR 99)) for the items that are subject to the transaction. The certification must also include a specific reference to the authorizing provision of the amended TGL. A general statement or declaration that the items falls within the scope of the amended TGL is not sufficient. The listed Huawei entity must also commit to comply with the recordkeeping requirements of the EAR, which include an obligation to produce to the U.S. Government upon request the certification and all other types of documents **the provision requires to be retained**. Finally, the certification must include a statement that the individual signing the certification has sufficient authority to legally bind the Huawei designated entity receiving the item.
- The rule also states that one certification can be used for multiple transactions, provided the exporter, reexporter, or transferor maintains a log or similar record that identifies each such export, reexport, and transfer against that specific certification statement.
- In addition to the new certification requirement, the amended TGL clarifies changes the scope of transactions authorized, as follows:

– ***Continued operation of existing networks and equipment***

- The authorization for continued operation of existing networks and equipment extends only to activities such as patching networks and network infrastructure equipment, does not authorize transfers of equipment for “general business purposes or for activities that are not in direct support of an existing and ‘fully operational network’ (e.g., semiconductor production equipment).”
- The TGL clarifies that “fully operational network” refers to a “third party” network (i.e., a party that is not Huawei, one of its listed non-U.S. affiliates, or the exporter, reexporter, or transferor) providing services to the third party’s customers.
- The final rule replaces the term “software updates” with “software for bug fixes, security vulnerability patches, and other changes to existing versions of the software.” Transactions involving such software are authorized if necessary to maintain and support existing and currently “fully operational networks” and equipment, provided the software does not “enhance the functional capacities of the original software or equipment.” “Functional capacities” is not defined.

- In addition to the certification requirements, the exporter, reexporter, or transferor must obtain additional support documentation needed to substantiate the certification statement from the listed Huawei entity—specifically, the documentation from Huawei or one of its listed non-U.S. affiliates showing that there was a legally binding contract or agreement executed between the listed Huawei entity and the “third party,” as defined, on or before May 16, 2019.
- **Support to existing “personal consumer electronic devices” and “Customer Premises Equipment”**
- The amended TGL removes the term “handsets” and replaces it with the defined term “personal consumer electronic devices,” which includes phones and other personally owned equipment, such as a tablets, smart watches, and mobile hotspots such as MiFi devices.
  - The amended TGL clarifies that this includes support for personal use of the telecommunications hardware known as customer premises equipment (CPE), such as network switches, residential Internet gateways, set-top boxes, home networking adapters, and other personally owned equipment that enable consumers to access network communications services and distribute them within their residence or small business.
  - As with transactions for the continued operation of existing networks and equipment, the amended TGL replaces the term “software updates” with “software for bug fixes, security vulnerability patches, and other changes to existing versions of the software” to existing personal consumer electronic devices, provided the software does not “enhance the functional capacities of the original software or equipment.” “Functional capacities” is not defined.
- **Removal of authorization for the engagement as necessary for the development of 5G standards:** The amended TGL removes the authorization for the “engagement as necessary for development of 5G standards by a duly recognized standards body” that was included in the May 20 TGL. BIS has determined that existing provisions of the EAR suffice for purposes of addressing the application of the Entity List-based license requirements to activities in connection with standards development bodies, including 5G standards bodies. BIS has [posted a general advisory opinion](#) relating to standards development activities. (We will publish a separate alert describing the scope of the EAR’s “published” provisions and their applicability to standards organizations.)

The amended TGL confirms that imports from Huawei and services provided to Huawei are not prohibited by the Entity Listing, provided, in the case of services, that they do not involve the export, reexport, or transfer (in-country) of items subject to the EAR.

#### Additions to the Entity List

Concurrent with the publication of the amended TGL, BIS published as a Public Inspection document a [final rule](#) adding an additional 46 Huawei affiliates to the Entity List. As with the additions from May 16, 2019, the export, reexport, and transfer to these entities of commodities, software, and technology subject to the EAR is prohibited, absent a license from BIS or the applicability of the amended TGL. Of

these entities, 27 are new entries on the Entity List, which BIS has divided by country. The other 19 entities are newly listed Chinese affiliates of Huawei that have been added under the entry for Huawei Technologies Co. Ltd. BIS also made changes to the addresses and placement of certain Huawei entities previously designated on the Entity List.

### Conclusion and Essential First Steps

In addition to understanding whether the changes to the TGL would affect a transaction authorized under the first TGL, one will need to obtain a certification from the relevant listed Huawei entity before exporting, reexporting, or transferring any items under the revised TGL.

Separate from the amended TGL, companies should update their internal export control compliance programs to screen shipments against the newly listed Huawei-related entities.

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