

US Designates Huawei to Entity List, Issues Temporary General License

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The US Commerce Department's Bureau of Industry and Security (BIS) added Huawei Technologies Co., Ltd. (Huawei) and 68 non-US Huawei affiliates to the BIS Entity List, effective May 16, 2019, at 4:15 p.m. Eastern Daylight Time.¹ The designation imposes an export license requirement on all exports, reexports, and transfers of items subject to the US Export Administration Regulations (EAR) to Huawei or the 68 listed affiliates.

BIS issued a 90-day Temporary General License (TGL) on May 20, 2019, partially restoring the previous licensing requirements and policies for export, reexport, and transfer of items subject to the EAR to Huawei and the 68 affiliates for engagement in transactions in four categories of activity: (1) continued operation of existing networks and equipment; (2) support to existing handsets; (3) cybersecurity research and vulnerability disclosure; and (4) engagement as necessary for development of 5G standards by a duly recognized standards body.²

Entity List Designation

BIS added Huawei and 68 non-US affiliates from 26 countries to the Entity List, effective May 16, 2019. The 68 non-US affiliates are located in Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Egypt, Germany, Hong Kong, Jamaica, Japan, Jordan, Lebanon, Madagascar, the Netherlands, Oman, Pakistan, Paraguay, Qatar, Singapore, Sri Lanka, Switzerland, Taiwan, the United Kingdom, and Vietnam.³ According to the BIS notice, BIS designated Huawei due to the US government's belief "that Huawei has been involved in activities contrary to the national security or foreign policy interests of the United States."⁴

These entities are now subject to a license requirement for the export, reexport, or transfer of all items "subject to the EAR." Most goods, software, and technology located in or originating from the United States are considered "subject to the EAR." Items outside of the United States may also be subject to the EAR if they incorporate greater than *de minimis* controlled US-origin content or are produced as the "direct product" of certain controlled US-origin technology.

License applications will be reviewed under a presumption of denial. No license exceptions are available for export, reexport, or transfers of items subject to the EAR to Huawei or any of the 68 affiliates added to the Entity List. These licensing requirements do not apply to separately incorporated affiliates of Huawei that are not listed on the Entity List. BIS encourages "persons . . . involved in transactions that are subject to the EAR"

¹ BIS, Final Rule, Addition of Entities to the Entity List, 84 FR 22961, [available here](#); the complete list of affiliates is available in the final rule.

² BIS, Temporary General License final rule, effective May 20, 2019, 84 FR 23468, [available here](#).

³ BIS, Final Rule, Addition of Entities to the Entity List, 84 FR 22961, [available here](#); the complete list of affiliates is available in the final rule.

⁴ BIS, Final Rule, Addition of Entities to the Entity List, 84 FR 22961, [available here](#).

to engage in “Know Your Customer (KYC)” due diligence and to carefully review any “red flags”⁵ to ensure compliance with BIS authorities.⁶

Savings Clause

The designation notice includes a savings clause, authorizing shipments of items otherwise captured by the designation to proceed if the items were *en route* aboard a carrier to a port of export or reexport on May 16, 2019, pursuant to actual orders for export or reexport to a foreign destination.

Temporary General License (TGL)

BIS issued a TGL on May 20, 2019, that partially restores the previous licensing requirements and policies for exports, reexports, and transfers of items related to four categories of activities to Huawei and the 68 affiliates.⁷ The TGL is effective May 20, 2019, and extends through August 19, 2019.

Authorizations

The TGL temporarily authorizes four categories of transactions involving the export, reexport, or transfer of items subject to the EAR to Huawei and the 68 affiliates, under the licensing requirements and other EAR policies that were in effect for those entities prior to their Entity List designations on May 16:

1. **Continued operation of existing networks and equipment:** 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/agreements executed between third parties and Huawei and/or the 68 affiliates and third parties on or before May 16, 2019.
2. **Support to existing handsets:** Engagement in transactions necessary to provide services and support, including software updates or patches, to existing Huawei handsets that were available to the public on or before May 16, 2019.
3. **Cybersecurity research and vulnerability disclosure:** Disclosure to Huawei and/or the 68 affiliates of information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei and/or the 68 affiliates, when such disclosure is 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, as well as handsets.
4. **Engagement as necessary for development of 5G standards by a duly recognized standards body:** Engagement with Huawei and/or the 68 affiliates as necessary for the development of 5G standards as part of a duly recognized international standards body (e.g., IEEE – Institute of Electrical and Electronics Engineers; IETF – Internet Engineering Task Force; ISO – International Organization for Standardization; ITU – International Telecommunications Union; ETSI- European Telecommunications Standards Institute; 3GPP - 3rd Generation Partnership Project; TIA- Telecommunications Industry Association; and GSMA, a.k.a., GSM Association, Global System for Mobile Communications).

Note that the TGL does not relieve any parties of any license requirements or regulatory obligations that were in effect prior to the imposition of the Entity List designations. For example, items that require an export license for export to China will still require an export license for export to China, even if authorized under the TGL. Any exports, reexports, or transfers to Huawei or its 68 listed affiliates that fall outside the terms of the TGL will require an export license, reviewed under a policy of denial.

Certification Statement and Recordkeeping

Exporters, reexporters, and transferors are required to create a certification statement prior to making an export, reexport, or transfer pursuant to the TGL. The certification statement must specify how the export,

⁵ BIS maintains a non-exhaustive list of example red flags, *available* [here](#).

⁶ BIS, Temporary General License final rule, effective May 20, 2019, 84 FR 23468, *available* [here](#).

⁷ BIS, Temporary General License final rule, effective May 20, 2019, 84 FR 23468, *available* [here](#).

reexport, or transfer falls within the scope of the TGL. The certification statement must be kept by the drafting exporter, reexporter, or transferor for recordkeeping purposes for five years.

Conclusion

Persons dealing in items subject to US export jurisdiction should ensure compliance with all applicable licensing requirements. Such persons should monitor these measures closely to ensure compliance. We will be monitoring developments as they arise.

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