

BIS Issues 90-DAY Temporary General License Authorizing Certain Exports to Huawei

MAY 23, 2019

On May 16, 2019, the Bureau of Industry and Security (BIS) of the U.S. Commerce Department announced it was adding Huawei Technologies Co. Ltd. (Huawei) and its affiliates to the Bureau Entity List. This effectively requires a license from BIS for any export, reexport, or in-country transfer to Huawei of items, parts, software, or technology subject to U.S. Export Administration Regulations (EAR). Items subject to the EAR include U.S.-origin products, products with specified amounts of U.S.-origin content, as well as certain items that are produced outside of the U.S. but are the “direct product” of U.S. technology or software. Please see our prior [briefing on this announcement](#).

On May 20, 2019, the BIS issued a [Temporary General License](#) (TGL) that authorizes specific export, reexport, and in-country transfers to Huawei and its affiliates from May 20, 2019 through August 19, 2019.

Where legally binding contracts were already present before the May 16 entity list addition, the TGL authorizes the following:

- *Continued operation of existing networks and equipment*: any transaction that is necessary to maintain and support existing networks and equipment – such as software updates;
- *Support to existing handsets*: applies to all Huawei handsets that were publicly available before May 16;
- *Cybersecurity research and vulnerability disclosure*: allows Huawei and its affiliates to disclose any vulnerability related to security research necessary to maintain the networks and equipment; and
- *Engagement as necessary for development of 5G standards by a duly recognized standards body*: allows for collaborations with Huawei and its affiliates for the development of the 5G network.

However, if a person wants to engage in any of the above dealings, it must create a *certification* statement explaining how the transaction meets the scope of the TGL and keep such certification in accordance with EAR recordkeeping requirements. Services rendered to Huawei should be scrutinized as well to determine whether they include technology transfers, and if so, whether the TGL authorizes the activity.

The TGL does not relieve persons from EAR requirements such as licensing requirements on certain exports to China.

Companies operating in the information and telecommunications space should carefully perform due diligence on their supply chains to ensure compliance with these requirements.

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