

## **Huawei Temporary General License Extension Frequently Asked Questions (FAQs)**

1) *What is the Temporary General License (TGL) for Huawei and what does it do?*

The TGL partially restores the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) to Huawei Technologies Co., Ltd. and its listed non-U.S. affiliates (collectively “Huawei”) for a narrow subsection of transactions necessary to permit, for example, U.S. telecommunications carriers with Huawei equipment to maintain their systems (e.g., cybersecurity updates) for 90 days.

The first TGL (the May 2019 TGL) was effective on May 20, 2019. *See* 84 Fed. Reg. (May 22, 2019). On August 19, 2019, a final rule (the August 2019 TGL) extending the TGL’s validity for an additional 90 days became effective through November 18, 2019.

The purpose of the TGL is to assure the continued secure operation of portions of telecommunications systems while allowing time for affected companies and persons to identify and shift to other sources of equipment, software, and technology.

2) *Does the August 2019 TGL make changes to the May 2019 TGL authorizations or requirements?*

Yes, the August 2019 TGL makes two main changes, both effective immediately upon the August 2019 TGL’s publication in the *Federal Register*: (1) removes the authorization in paragraph (c)(4) *Engagement as Necessary for Development of 5G Standards by a Duly Recognized Standards Body* (for additional information about that change see FAQ # 7 below); and (2) makes changes to the certification requirements. For additional information, see FAQs # 8 & 9 below.

Additionally, the August 2019 TGL clarifies the meaning of certain terms used in the TGL. Specifically, two notes clarify the meaning of the terms “third parties” and “fully operational networks.”

3) *What services are covered by the Entity List requirements?*

Services are generally not subject to the EAR except in limited circumstances involving U.S. persons controls for weapons of mass destruction-related activities (as specified in § 744.6 of the EAR) or when servicing an item subject to the EAR with “knowledge” of a violation (as specified in §§ 764.2(e) and 736.2(b)(10) of the EAR). However, BIS understands that the telecommunications industry may use the term services to include the export or transfer (in-country) of software or technology in terms of, inter alia, operation and/or management of a telecommunications network. In any circumstance where a U.S.-origin item (e.g., hardware, software, or technology) is exported, reexported, or transferred (in-country) to Huawei or one of its affiliates on the Entity List in the performance of any activity, including management of a telecommunications network, the transaction would be subject to the EAR and require a license

unless the transaction is eligible for authorization under the savings clause or the TGL.

4) *Does the August 2019 TGL make any changes to paragraph (c)(1) of the TGL?*

Yes. The August 2019 TGL revises paragraph (c)(1), *Continued Operation of Existing Networks and Equipment*, to clarify that this authorization extends only to exports, reexports, and transfers (in-country) that support currently existing and ‘fully operational networks’ and equipment. BIS added exclusions to clarify the scope of the authorization. The first exclusion (found in paragraph (c)(1)(i)(A) of the TGL) specifies that end-devices, such as general purpose computing devices, are not part of ‘fully operational networks’ and therefore are not within the scope of paragraph (c)(1). The second exclusion (found in paragraph (c)(1)(i)(B) of the TGL) specifies that equipment that is not directly related to the support and maintenance of the network, such as general purpose business equipment, is also not within the scope of that paragraph’s authorization. Therefore, the TGL does not extend to these end-devices and equipment.

Additionally, the August 2019 TGL adds two notes to the paragraph (c)(1) authorization to clarify the meaning of the terms ‘third parties’ and ‘fully operational networks.’

5) *Does the August 2019 TGL make any changes to paragraph (c)(2) of the TGL?*

Yes. The August 2019 TGL clarifies the types of items that are covered in paragraph (c)(2) (*Support to Existing Handsets*) by changing the title to *Support to Existing ‘Personal Consumer Electronic Devices’ and Customer Premises Equipment (CPE)*). The August 2019 TGL clarifies ‘personal consumer electronic devices’ for purposes of paragraph (c)(2) to include phones and other personally-owned equipment, such as tablets, smart watches, televisions, and mobile hotspots such as MiFi devices. The August 2019 TGL also clarifies that it authorizes ‘customer premises equipment’ (CPE) for export, reexport or transfer (in-country) such as network switches, residential Internet gateways, set-top boxes, home networking adapters, and other personally-owned equipment that enables consumers to access network communications services and distribute them throughout their residence or small business.

The authorization continues to be limited to models of Huawei ‘personal consumer electronic devices’ and ‘CPE’ that were available to the public on or before May 16, 2019.

6) *Why did BIS remove the authorization in paragraph (c)(4) of the TGL?*

BIS removed paragraph (c)(4) (*Engagement as Necessary for the Development of 5G Standards by a Duly Recognized Standards Body*) based on the determination 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 in the FAQ section of the BIS website under “Published Technology and Software (§ 734.7),” at <https://www.bis.doc.gov/index.php/documents/compliance-training/export-administration-regulations-training/1554-ear-definitions-faq/file>, relating to standards development activities. As discussed in the general advisory opinion, the disclosure to any of the Huawei listed entities

of technology or software subject to the EAR is a prohibited activity, absent a license from BIS. Information, including technology, that is made available to the public without restrictions upon its further dissemination is not presently subject to the EAR if the existing criteria of § 734.7 are met.

7) *How does the August 2019 TGL change the certification required by paragraph (d) of the TGL?*

The August 2019 TGL makes several changes to the certification requirement. Under the May 2019 TGL, the exporter, reexporter, or transferor was required to create a certification statement prior to making a shipment authorized under the TGL. The August 2019 TGL requires the exporter, reexporter, or transferor to obtain a certification statement from the listed entity or entities that will receive items under the temporary general license. This must be done prior to any export, reexport, or transfer (in-country).

The August 2019 TGL also expands the information required to be in the certification statement provided by Huawei or its affiliates on the Entity List. While the May 2019 TGL required that the certification statement include a statement specifying how the shipment is within the scope of the TGL, the August 2019 TGL mandates specific information be included in the certification, including a list of the items that will be exported, reexported, or transferred under the TGL and quantity thereof (for tangible shipment of commodities and software). In addition, the Huawei-affiliated listed entity must certify in writing that: the end use of the items to be received will meet the scope of a specified subparagraph under paragraph (c) of the TGL; the entity will comply with the record keeping requirements in part 762 of the EAR; and the individual signing the certification statement has sufficient authority to legally bind the Huawei entity to the certification statement's commitments.

8) *Is a new certification statement required for every shipment made pursuant to the TGL?*

No, as stated in the August 2019 TGL in paragraph (d)(2), a certification statement may be used for multiple exports, reexports, or transfers (in-country) of the same item(s) under the TGL, provided that the information included in the certification statement is still accurate for the exports, reexports, or transfers (in-country). If multiple exports, reexports, or transfers (in-country) are made against the same certification statement, the exporter, reexporter, or transferor relying on that certification statement must maintain a log or other similar record that identifies each item and the quantity thereof for each export reexport, or transfer (in-country) made against that certification statement, and the log or other similar record must be retained in accordance with part 762 of the EAR.