

Huawei Entity List and Temporary General License Frequently Asked Questions (FAQs)
UPDATED SEPTEMBER 18, 2019
(This document is subject to amendment so check back frequently for updates.)

1) *Why did BIS add Huawei to the Entity List?*

BIS added Huawei Technologies Co., Ltd. (Huawei) and many of its non-U.S. affiliates to the Entity List effective May 16, 2019 on the basis of information that provided a reasonable basis to conclude that Huawei is engaged in activities that are contrary to U.S. national security or foreign policy interests and its non-U.S. affiliates pose a significant risk of involvement in activities contrary to the national security of the United States. This information included the activities alleged in the Department of Justice's public Superseding Indictment of Huawei, including alleged violations of the International Emergency Economic Powers Act (IEEPA), conspiracy to violate IEEPA by providing prohibited financial services to Iran, and obstruction of justice in connection with the investigation of those alleged violations of U.S. sanctions. Effective August 19, 2019, BIS added another 46 non-U.S. affiliates of Huawei to the Entity List because they also pose a significant risk of involvement in activities contrary to the national security or foreign policy interests of the United States.

2) *What is the impact of the addition of Huawei and its non-U.S. affiliates to the Entity List?*

The addition of Huawei and its affiliates to the Entity List imposed a license requirement on the listed entities supplemental to those found elsewhere in the Export Administration Regulations (EAR). Specifically, the additions imposed a license requirement for all items subject to the EAR. Therefore, the export, reexport, or transfer (in-country) of any item subject to the EAR to Huawei or any of its listed affiliates now requires a license unless the activity is authorized pursuant to the Entity List rule's savings clause or the Temporary General License (TGL) (84 Fed. Reg. 23468, May 22, 2019 as extended by 84 Fed. Reg. 43487, August 21, 2019). See below for information on both. All other exports, reexports, or transfers (in-country) of items subject to the EAR will require a license and the U.S. Government will review license applications for such transactions under a presumption of denial.

3) *Does de minimis apply to the Huawei Entity List Rule?*

Unless authorized by the TGL or the savings clause in the Huawei Entity List Rules, a license is required to export, reexport, or transfer (in-country) any item subject to the EAR to Huawei or any of its listed affiliates. Items not subject to the EAR are not subject to the Entity List's requirements.

4) *When is the Huawei Entity List Rules' savings clause applicable?*

The savings clause described in the Huawei Entity List Rules authorize shipments of items subject to the EAR that were already en route aboard a carrier to a port of export or reexport on the dates that the rules were effective (i.e., May 16, 2019 for the May 2019 Entity List additions rule and August 19, 2019 for the August 2019 Entity List additions rule), pursuant to actual

orders for export or reexport to a foreign destination, to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

5) *Are there any license exceptions available for transactions that are not authorized under the Entity List savings clause or the TGL?*

License exceptions are not available for exports, reexports, or transfers (in-country) to the listed entities except as allowed in the savings clause described above or the TGL discussed below.

6) *Can I pay Huawei or one of its listed affiliates for items received from Huawei or one of its affiliates?*

Yes, you can. The listing of an entity on the Entity List does not impose limitations on payments between parties; therefore, you may pay Huawei or one of its listed affiliates for items received from Huawei or one of its listed affiliates.

7) *Can Huawei or one of its listed affiliates pay me for items that I shipped to them?*

Yes. The listing of an entity on the Entity List does not impose limitations on payments between parties; therefore, Huawei or one of its affiliates can pay you for items lawfully shipped.

8) *Can Huawei or one of its listed affiliates return items to me if the items are subject to the EAR?*

Yes, they can. However, if the items are returned to you for repair, you cannot return them to Huawei or a listed affiliate without a license from BIS, unless the items are eligible for export, reexport, or transfer (in-country) under the TGL.

9) *Can I sell items to Huawei locations in the United States?*

Suppliers will need to conduct due diligence to determine if the items will or are intended to be exported to Huawei or one of its listed affiliates. Supplement No. 3 to Part 732 of the EAR includes “Know Your Customer” guidance and discusses resolving “red flags” relating to transactions and activities subject to the EAR, including with regard to the type of item involved, its end use or uses, and the quantity being purchased.

10) *Can I import Huawei phones into the United States?*

Yes. Imports of Huawei goods into the United States are not impacted by the addition of Huawei and its affiliates to the Entity List. However, you cannot return the phones to Huawei or a listed affiliate, including for any repairs, without a license from BIS, unless the items are eligible for export, reexport, or transfer (in-country) under the TGL.

11) *Did adding Huawei to the Entity List affect Huawei’s ability to buy a license to use patents?*

A patent is neither issued by BIS nor is itself an item subject to the EAR. However, if a patent license directly or indirectly would enable Huawei or any of the other listed entities to acquire an item subject to the EAR, a BIS license is required.

- 12) *What does the temporary general license implemented by the Department do for U.S. exporters?*

The TGL temporarily authorizes engagement in transactions involving the export, reexport, and transfer (in-country) of items subject to the EAR to Huawei and its affiliates listed on the Entity List, under certain conditions. The TGL was implemented to prevent the interruption of the existing global network communication system and allow time for companies and persons to shift to other sources of equipment, software and technology.

Transactions that are outside of the scope of the authorities identified in the TGL remain subject to the terms detailed in the Final Rules that added Huawei and its affiliates to the Entity List (i.e., a license is required for all items subject to the EAR, such licenses will be reviewed under a policy of presumption of denial, and no license exceptions are available).

To see the TGL please visit the BIS website here:

<https://www.bis.doc.gov/index.php/regulations/federal-register-notice>

- 13) *If my transaction qualifies for one of the authorizations under the TGL, how do I utilize the TGL? Do I need a license number for the TGL?*

The TGL temporarily suspends the license requirement that results from the Entity Listing for certain transactions. Therefore, if your item did not require a license for export, reexport, or transfer (in-country) to Huawei or one of the other listed entities (i.e., no license required or NLR), or the transaction was eligible for a License Exception, then provided the transaction is eligible for one of the authorizations under the TGL, and you have received a copy of the certification statement required by the TGL from Huawei or one of its entity listed affiliates (see separate FAQs on certification requirements), you should reference NLR or the relevant License Exception for purposes of the Automated Export System (AES).

If your item required a license to be exported, reexported, or transferred (in-country) to Huawei or its affiliates before the addition of Huawei and its affiliates to the Entity List, you must apply for the required license via the normal license application process. See part 762 of the EAR for document retention requirements under the EAR.

- 14) *Does Authorization 1 of the TGL authorize all business continuity activities that are normally required to maintain and support existing networks?*

Activities that are eligible for Authorization 1 under the TGL include support to operators (e.g., debugging, configuration, and other activities to maintain services); emergency and planned software updates necessary to maintain network operability; in-life upgrades of equipment and components to maintain (but not expand) capacity; and in-life replacements of defective hardware. Authorization 1 does not authorize activities or equipment that will increase or

enhance the functionality of the network beyond its current capabilities or end-of-life replacement.

15) *How long will the TGL be in effect?*

The current iteration of the TGL (84 Fed. Reg. 43487, August 21, 2019) is in effect for 90 days, from August 19 through November 18, 2019.

16) *Will BIS renew the TGL again?*

Any decision to renew the Temporary General License will be made at the sole discretion of the U.S. Government.

17) *How will I know if BIS renews the TGL?*

Any additional TGL renewal will be published in the *Federal Register* as a Final Rule. BIS recommends checking the *Federal Register* at or near the date of expiry of the current TGL to determine if the TGL has expired or been extended. BIS will also announce any renewals of the TGL on its website and via its regulatory update list serve. You can sign up for the list serve here: <https://mailinglist.bis.doc.gov/lists/?p=subscribe&id=2&id=2>.

18) *What happens if BIS does not renew the TGL?*

If the TGL is not extended beyond November 18, 2019, the license requirement in the Entity List entries for Huawei and its affiliates (i.e., all items subject to the EAR) immediately applies to all exports, reexports, and transfers (in-country) to those entities.