



BILLING CODE

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 762

[Docket No. 190513445-9459-02]

RIN 0694-AH86

Temporary General License

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule creates a 90-day temporary general license that partially restores the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) to sixty-nine entities added to the Entity List on May 16, 2019.

DATES: This rule is effective May 20, 2019, through August 19, 2019.

FOR FURTHER INFORMATION CONTACT: Director, Office of Exporter Services,
Bureau of Industry and Security, Department of Commerce, Phone: (949) 660-0144 or (408)
998-8806 or e-mail your inquiry to: ECDOEXS@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) identifies entities and other persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

This final rule does not amend the Entity List, but modifies the license requirement for the sixty-nine entries added to the Entity List in the May 16, 2019, final rule entitled “Addition of Entities to the Entity List,” as described further below, by adding a temporary general license for the specified entities.

Addition of Huawei Technologies Co., Ltd. and Sixty-Eight Related Entities to the Entity List

BIS added Huawei Technologies Co., Ltd. (Huawei) and sixty-eight of its non-U.S. affiliates to the Entity List on May 16, 2019. Details regarding the scope of the listing are in the final rule titled “Addition to the Entity List,” effective May 16, 2019, and scheduled to publish in the May 21, 2019, issue of the Federal Register. The sixty-eight non-U.S. affiliates are also listed in Supplement No. 7 to part 744 – Temporary General License.

Addition of Temporary General License

This final rule amends the EAR by adding Supplement No. 7 to Part 744 to create a Temporary General License that returns in part the prior requirements through August 14, 2019. In this final rule, pursuant to Supplement No. 5 to part 744 of the Export Administration Regulations (EAR), BIS is modifying the effect of the sixty-nine entries on the Entity List by adding a temporary general license to temporarily authorize, as specified below, engagement in transactions, involving the export, reexport, and transfer (in-country) of items subject to the EAR to Huawei and its sixty-eight non-U.S. affiliates subject to the conditions described below.

- a. This temporary general license is effective from the date of this Authorization, May 20, 2019, through August 19, 2019.
- b. This temporary general license does not relieve persons of other obligations under the EAR, including but not limited to licensing requirements to the People’s Republic of China (PRC or China) or elsewhere and/or the requirements of part 744 of the EAR. This authorization does not authorize any activities or transactions involving Country Group E countries (i.e., Cuba, Iran, North Korea, Sudan, and Syria) or persons.

- c. With the exception of the transactions explicitly authorized by this temporary general license, exports, reexports, and transfers (in-country) continue to require a license pursuant to the license requirement set forth in Supplement No. 4 to part 744 for Huawei and the sixty-eight non-U.S. affiliates and will be reviewed under the license review policy for those entities.

This temporary general license allows, from May 20, 2019, through August 19, 2019, the following:

1. *Continued Operation of Existing Networks and Equipment:* BIS authorizes engagement in transactions, subject to other provisions of the EAR, 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.
2. *Support to Existing Handsets:* BIS authorizes engagement in transactions, subject to other provisions of the EAR, necessary to provide service 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:* BIS authorizes, subject to other provisions of the EAR, the 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, as well as handsets.

4. *Engagement as Necessary for Development of 5G Standards by a Duly Recognized Standards Body:* BIS authorizes, subject to other provisions of the EAR, 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 (e.g., IEEE – Institute of Electrical and Electronics Engineers; IETF – Internet Engineering Task Force; ISO – International Organization for Standards; 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).

The licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Huawei and sixty-eight of its non-U.S. affiliates that were in effect prior to their addition to the Entity List on May 16, 2019, are available for exports, reexports, and transfers (in-country) for transactions eligible for the temporary general license established by this final rule.

For example, the authority of NLR or a license exception that was available on or before May 16, 2019, may be used pursuant to this temporary general license if the underlying export, reexport, or transfer (in-country) meets the temporary general license conditions and is limited in scope to the support of one or more of activities described in clauses 1-4 above.

This temporary general license does not relieve persons of other obligations under the EAR, including but not limited to licensing requirements to the PRC or elsewhere and/or the requirements of the part 744 of the EAR, such as those specified in §§ 744.2, 744.3 and 744.4 of the EAR. This temporary general license does not authorize any activities or transactions involving Country Group E countries or persons. For example, this temporary general license does not relieve persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, “you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.” BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, “BIS’s ‘Know Your Customer’ Guidance and Red Flags,” when persons are involved in transactions that are subject to the EAR.

Required Certification statement and change to EAR recordkeeping requirement

Also in new Supplement No. 7 to part 744, this final rule includes a paragraph (d) (Certification statement). The certification statement is required to be made by the exporter, reexport, or transferor prior to making an export, reexport, or transfer (in-country) pursuant to this Temporary General License. The certification statement must be kept for recordkeeping purposes by the exporter, reexporter, or transferor.

As a conforming change, in part 762 (Recordkeeping), this final rule adds a new paragraph (b)(55) to reference the Certification statement required in order to rely in the Temporary General License.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115-232 (132 Stat. 2210); 50 U.S.C. 4801 et seq.), which provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 et seq.) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and

of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical

requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 744 and 762 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 744—[AMENDED]

1. The authority citation for part 744 continues to read as follows:

Authority: Pub. L. 115-232, 132 Stat. 2208 (50 U.S.C. 4801 et seq.); 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8,

2018, 83 FR 39871 (August 13, 2018); Notice of September 19, 2018, 83 FR 47799 (September 20, 2018); Notice of November 8, 2018, 83 FR 56253 (November 9, 2018); Notice of January 16, 2019, 84 FR 127 (January 18, 2019).

2. Add Supplement No. 7 to part 744 to read as follows:

SUPPLEMENT NO. 7 TO PART 744—TEMPORARY GENERAL LICENSE

Notwithstanding the requirements and other provisions of Supplement No. 4 to part 744, which became effective on May 16, 2019, the licensing and other requirements in the EAR as of May 15, 2019, pertaining to exports, reexports, and transfers (in-country) of items “subject to the EAR” to Huawei Technologies Co., Ltd. (Huawei), Shenzhen, Guangdong, China, and sixty-eight of its non-U.S. affiliates, as listed in this supplement, are restored in part as of May 20, 2019, and through August 19, 2019. Thus, for example, the authority of NLR or a License Exception that was available on or before May 16, 2019 may be used as per this temporary general license.

(a) *Identification of non-U.S. affiliates.* The non-U.S. affiliates to whom the licensing and other requirements of the EAR are restored as described herein are as follows (listed alphabetically by country):

- (1) Huawei Technologies Research & Development Belgium NV, Belgium;
- (2) Huawei Technologies (Bolivia) S.R.L., La Paz, Bolivia;
- (3) Huawei do Brasil Telecomunicações Ltda, Sao Paulo, Brazil;

- (4) Huawei Technologies (Yangon) Co., Ltd., Yangon, Burma;
- (5) Huawei Technologies Canada Co., Ltd., Markham, ON, Canada;
- (6) Huawei Chile S.A., Santiago, Chile;
- (7) Beijing Huawei Digital Technologies Co., Ltd., Beijing China;
- (8) Chengdu Huawei High-Tech Investment Co., Ltd., Chengdu, Sichuan, China;
- (9) Chengdu Huawei Technologies Co., Ltd., Chengdu, Sichuan, China;
- (10) Dongguan Huawei Service Co., Ltd., Dongguan, Guangdong, China;
- (11) Dongguan Lvyuan Industry Investment Co., Ltd., Dongguan, Guangdong, China;
- (12) Gui'an New District Huawei Investment Co., Ltd., Guiyang, Guizhou, China;
- (13) Hangzhou Huawei Digital Technology Co., Ltd., Hangzhou, Zhejiang, China;
- (14) HiSilicon Optoelectronics Co., Ltd., Wuhan Hubei, China;
- (15) HiSilicon Technologies Co., Ltd (HiSilicon), Bantian Longgang District, Shenzhen, 518129, China;
- (16) Hisilicon Tech (Suzhou) Co., Ltd., Suzhou, Jiangsu, China;
- (17) Huawei Device Co., Ltd., Dongguan, Guangdong, China;
- (18) Huawei Device (Dongguan) Co., Ltd., Dongguan, Guangdong, China;
- (19) Huawei Device (Shenzhen) Co., Ltd., Shenzhen, Guangdong, China;
- (20) Huawei Digital Technologies (Suzhou) Co., Ltd., Suzhou, Jiangsu, China;
- (21) Huawei Machine Co., Ltd., Dongguan, Guangdong, China;
- (22) Huawei Software Technologies Co., Ltd., Nanjing, Jiangsu, China;
- (23) Huawei Technical Service Co., Ltd., China;
- (24) Huawei Technologies Service Co., Ltd., Langfang, Hebei, China;
- (25) Huawei Training (Dongguan) Co., Ltd., Dongguan, Guangdong, China;

- (26) Huayi Internet Information Service Co., Ltd., Shenzhen, Guangdong, China;
- (27) North Huawei Communication Technology Co., Ltd., Beijing, China;
- (28) Shanghai Haisi Technology Co., Ltd., Shanghai, China;
- (29) Shanghai Huawei Technologies Co. Ltd., Shanghai, China;
- (30) Shanghai Mossel Trade Co., Ltd., Shanghai, China;
- (31) Shenzhen Huawei Technical Services Co., Ltd., Shenzhen, Guangdong, China;
- (32) Shenzhen Huawei Terminal Commercial Co., Ltd., Shenzhen, Guangdong, China;
- (33) Shenzhen Huawei Training School Co., Ltd., Shenzhen, Guangdong, China;
- (34) Shenzhen Huayi Loan Small Loan Co., Ltd., Shenzhen, Guangdong, China;
- (35) Shenzhen Legrit Technology Co., Ltd., Shenzhen, Guangdong, China;
- (36) Shenzhen Smartcom Business Co., Ltd., Shenzhen, Guangdong, China;
- (37) Suzhou Huawei Investment Co., Ltd., Suzhou, Jiangsu, China;
- (38) Wuhan Huawei Investment Co., Ltd., Wuhan, Hubei, China;
- (39) Xi'an Huawei Technologies Co., Ltd., Xi'an, Shaanxi, China;
- (40) Xi'an Ruixin Investment Co., Ltd., Xi'an, Shaanxi, China;
- (41) Zhejiang Huawei Communications Technology Co., Ltd., Hangzhou, Zhejiang, China;
- (42) Huawei Technology, Cairo, Egypt;
- (43) Huawei Technologies Deutschland GmbH, Germany;
- (44) Huawei Device (Hong Kong) Co., Limited, Tsim Sha Tsui, Kowloon, Hong Kong;
- (45) Huawei International Co., Limited, Hong Kong;
- (46) Huawei Tech. Investment Co., Limited (Huawei Investment), Hong Kong;
- (47) Huawei Technologies Co. Ltd., Tsim Sha Tsui, Kowloon, Hong Kong;
- (48) Hua Ying Management Co. Limited, Tsim Sha Tsui, Kowloon, Hong Kong;

- (49) Smartcom (Hong Kong) Co., Limited, Sheung Wan, Hong Kong;
- (50) Huawei Technologies Jamaica Company Limited, Kingston, Jamaica;
- (51) Huawei Technologies Japan K.K., Japan;
- (52) Huawei Technologies Investment Co. Ltd., Amman, Jordan;
- (53) Huawei Technologies Lebanon, Beirut, Lebanon;
- (54) Huawei Technologies Madagascar Sarl, Antananarivo, Madagascar;
- (55) Huawei Technologies Coöperatief U.A., Netherlands;
- (56) Huawei Tech Investment Oman LLC, Muscat, Oman;
- (57) Huawei Technologies Pakistan (Private) Limited, Islamabad, Pakistan;
- (58) Huawei Technologies Paraguay S.A., Asuncion, Paraguay;
- (59) Huawei Tech Investment Limited, Doha, Qatar;
- (60) Huawei International Pte. Ltd., Singapore;
- (61) Huawei Technologies Lanka Company (Private) Limited, Colombo, Sri Lanka;
- (62) Huawei Technologies Switzerland AG, Liebefeld, Bern, Switzerland;
- (63) Xunwei Technologies Co., Ltd., Taipei, Taiwan;
- (64) Huawei Global Finance (UK) Limited, Great Britain;
- (65) Proven Glory, British Virgin Islands;
- (66) Proven Honour, British Virgin Islands;
- (67) Huawei Technologies (Vietnam) Company Limited, Hanoi, Vietnam; *and*
- (68) Huawei Technology Co. Ltd., Hanoi, Vietnam.

(b) *Conditions for use of temporary general license.* Use of this temporary general license is subject to the following conditions:

(1) This temporary general license is effective from May 20, 2019, through August 19, 2019.

(2) This temporary general license does not resolve persons of other obligations under the EAR, including but not limited to licensing requirements to the Peoples Republic of China or elsewhere and/or the requirements of part 744 of the EAR. This authorization does not authorize any activities or transactions involving Country Group E countries (i.e., Cuba, Iran, North Korea, Sudan and Syria) or persons.

(3) With the exception of those explicitly authorized in this temporary general license, exports, reexports, transfers (in-country) continue to require a license pursuant to the licensing policy described on the Entity List and license applications will be reviewed under the license review policy for that entry.

(c) *Authorized transactions.* This temporary general license allows, from May 20, 2019, through August 19, 2019, the following:

(1) *Continued operation of existing networks and equipment:* BIS authorizes engagement in transactions, subject to other provisions of the EAR, 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.

(2) *Support to existing handsets*: BIS authorizes engagement in transactions, subject to other provisions of the EAR, 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.

(3) *Cybersecurity research and vulnerability disclosure*: BIS authorizes, subject to other provisions of the EAR, the 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.

(4) *Engagement as necessary for development of 5G standards by a duly recognized standards body*: BIS authorizes, subject to other provisions of the EAR, 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 (e.g., IEEE – Institute of Electrical and Electronics Engineers; IETF – Internet Engineering Task Force; ISO – International Organization for Standards; 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).

(d) *Certification statement.* Prior to making an export, reexport, or transferor (in-country) pursuant to this Temporary General License, an exporter, reexporter, or transferor must create a certification statement. In order to rely on the Temporary General License, the certification statement must specify how the export, reexport, or transfer (in-country) meets the scope of the Temporary General License. The exporter, reexporter, or transferor that drafted the statement is responsible for retaining the certification statement. *See* part 762 of the EAR for record retention requirements.

PART 762—[AMENDED]

3. The authority citation for part 762 is revised to read as follows:

Authority: Pub. L. 115-232, Title XVII, Subtitle B. 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018).

4. Section 762.2 is amended:

a. By removing the word “and” at the end of paragraph (b)(53);

b. By removing the period at the end of paragraph (b)(54) and adding a semi-colon in its place, and

c. By adding paragraph (b)(55).

The addition reads as follows:

§ 762.2 Records to be retained.

(b) * * *

(55) Supplement No. 7 to Part 744, Temporary General License Certification Statement.

* * * * *

Dated: May 20, 2019.

Nazak Nikakhtar

Assistant Secretary for Industry and Analysis,

Performing the Nonexclusive Functions and

Duties of the Under Secretary for Industry and Security

[FR Doc. 2019-10829 Filed: 5/20/2019 4:15 pm; Publication Date: 5/22/2019]