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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 762

[Docket No. 190814-0012]

RIN 0694-AH86

Temporary General License: Extension of Validity, Clarifications to Authorized Transactions, and Changes to Certification Statement Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On May 16, 2019, Huawei Technologies Co., Ltd. (Huawei) and sixty-eight of its non-U.S. affiliates were added to the Entity List. Their addition to the Entity List imposed a licensing requirement under the Export Administration Regulations (EAR) regarding the export, reexport, or transfer (in-country) of any item subject to the

EAR to any of these 69 listed Huawei entities. The Entity List-based licensing requirement applied in addition to any other license requirement, if any, applicable under the EAR to the transaction in question. On May 22, 2019, the Bureau of Industry and Security (BIS) published a temporary general license, effective May 20, 2019, that modified the effect of the listing in order to temporarily authorize engagement in certain transactions, involving the export, reexport, or transfer (in-country) of items subject to the EAR to the 69 listed Huawei entities. The U.S. Government has decided to extend the temporary general license through November 18, 2019. In order to implement this decision, this final rule revises the temporary general license to remove the expiration date of August 19, 2019, and substitutes the date of November 18, 2019. This final rule also makes certain clarifying changes to the authorized transactions under the temporary general license to improve public understanding. Lastly, this final rule revises the temporary general license by changing which party to the transaction is required to create the certification statement by requiring that the exporter, reexporter, or transferor obtain a certification statement from the pertinent Huawei listed entity prior to using the temporary general license. Concurrently with the this final rule, BIS is also publishing elsewhere in this issue of the Federal Register the final rule, *Addition of Certain Entities to the Entity List and Revision of Entries on the Entity List*. This final rule, as a conforming change for the addition of these other non-U.S. affiliates of Huawei to the Entity List, revises the temporary general license to include those additional Huawei affiliates within the scope of the temporary general license.

DATES: This rule is effective [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST] through November 18, 2019, except for amendatory instructions 1

and 3, which are effective [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST]. The expiration date of the final rule published on May 22, 2019 (84 FR 23468) is extended until November 18, 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

As published on May 22, 2019, the temporary general license authorizes certain activities, including those necessary for the continued operations of existing networks and to support existing mobile services, including cybersecurity research critical to maintaining the integrity and reliability of existing and fully operational networks and equipment. Exporters, reexporters, and transferors are required to maintain certifications and other records, to be made available when requested by BIS, regarding their use of the temporary general license.

As published on May 22, 2019, and as revised and clarified by this final rule, any exports, reexports, or in-country transfers of items subject to the EAR to any of the 69 listed Huawei entities continue to require a license based on their addition to the Entity List, with the exception of transactions explicitly authorized by the temporary general license and eligible for export, reexport, or transfer (in-country) prior to May 16, 2019,

without a license or under a license exception. License applications will continue to be reviewed under a presumption of denial, as stated in the Entity List entries for the listed Huawei entities.

No persons are relieved 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. The temporary general license also does not authorize any activities or transactions involving Country Group E countries (*i.e.*, Cuba, Iran, North Korea, Sudan, and Syria) or foreign nationals.

Ninety-day extension of validity

At this time, the U.S. Government has decided to extend the temporary general license until November 18, 2019, as revised and clarified as described below. In order to implement this U.S. Government decision, this final rule revises the temporary general license to remove the date of August 19, 2019, and substitutes the date of November 18, 2019, in the introductory text and in paragraph (b)(1) of the temporary general license and in the introductory text of paragraph (c) of Supplement No. 7 to part 744.

Conforming change for additional Huawei affiliates added to the Entity List

Concurrently with this final rule, BIS is also publishing elsewhere in this issue of the Federal Register the final rule, *Addition of Certain Entities to the Entity List and Revision of Entries on the Entity List*. The other rule adds forty-six additional 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. See the final rule in this same issue of the Federal Register for additional information.

This final rule, as a conforming change for the addition of these other non-U.S. affiliates of Huawei to the Entity List, revises paragraph (a) (Identification of non-U.S. affiliates) by removing paragraphs (a)(1) to (a)(68) that identifies the non-U.S. affiliates each by name and adds in its place paragraphs (a)(1) and (a)(2) as a simpler method for identifying the non-U.S. affiliates of Huawei that are within the scope of the temporary general license. Paragraph (a)(1) will identify the non-U.S. affiliates added to the Entity List in the rule published on May 21, 2019 (84 FR 22961), and effective May 16, 2019. Paragraph (a)(2) will identify the non-U.S. affiliates added to the Entity List with a reference to this final rule effective on [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST].

Clarification of authorized transactions under the temporary general license

The temporary general license includes paragraph (c) (Authorized transactions) that allows during the validity period of the temporary general license certain exports, reexports, and transfers (in-country) that meet specified criteria. As described below, this final rule removes paragraph (c)(4) without implicating the Entity List-based license requirements for Huawei and its non-U.S. affiliates on the Entity List. Since the temporary general license became effective on May 20, 2019, BIS has received a number of questions regarding the temporary general license and many of these questions have requested clarification regarding the scope of paragraph (c)(1), (2), or (4). BIS intends to

soon post on its website Frequently Asked Questions (FAQs) and other guidance to answer the questions received that have broad applicability to exporters, reexporters, and transferors. In addition, BIS has identified certain clarifying changes that should be made to paragraph (c) to improve public understanding of the intended scope of the temporary general license.

This final rule revises paragraph (c)(1) (Continued operation of existing networks and equipment) by adding a new paragraph (c)(1)(i) (Exclusions) to clarify that the scope of the paragraph (c)(1) authorization does not include certain exports, reexports, or transfers (in-country) for existing networks. This final rule adds an exclusion under paragraph (c)(1)(i)(A) to specify that end-devices such as general-purpose computing devices are not considered to be part of an existing and fully operational network. This exclusion also specifies that equipment that is not directly related to the support and maintenance of the network is excluded. An exclusion also is added under new paragraph (c)(1)(i)(B) to specify that transfers of equipment for general business purposes or for activities that are not in direct support of an existing and fully operational network are not included in the temporary general license. This final rule also adds a parenthetical phrase to provide an illustrative example of semiconductor production equipment as a type of equipment that would be excluded under paragraph (c)(1) of the temporary general license. Lastly, this final rule adds clarifying text to the introductory text of paragraph (c)(1) to specify that software for bug fixes, security vulnerability patches, and other updates to existing versions of the software necessary to maintain and support existing and currently ‘fully operational networks’ and equipment are under paragraph (c)(1) of the temporary general license, provided the software does not enhance the functional

capacities of the original software or equipment. The May 22 rule used the phrase ‘software updates and patches.’ This final rule replaces that text with more specific text to improve public understanding for what software is eligible under paragraph (c)(2). This final rule makes this same type of software clarification to paragraph (c)(2) described below.

This final rule adds and reserves paragraph (c)(1)(ii) to conform to Federal Drafting Handbook requirements for the addition of paragraph (c)(1)(i).

To clarify the scope of paragraph (c)(1) to address questions received from the public, this final rule adds two new notes to paragraph (c)(1). New Note 1 to paragraph (c)(1) clarifies the intended meaning of the terms ‘third party’ and ‘third parties’ as used in the paragraph (c)(1) authorization. The note specifies that a ‘third party’ is intended to be a party such as a telecommunication service provider, and does not include or refer to any of the Huawei listed entities or exporter, reexporter, or transferor.

New Note 2 to paragraph (c)(1) clarifies the intended meaning of the term ‘fully operational network,’ as used in paragraphs (c)(1) and (3). The new Note 2 specifies that a ‘fully operational network’ means a ‘third party’ network that is providing services to that ‘third party’s’ customers. Paragraph (c)(2) of the temporary general license authorizes engagement in transactions necessary to support, including through software updates and patches, existing models of Huawei ‘personal consumer electronic devices,’ which is being added in place of the undefined term ‘handsets’ that appeared in the temporary general license as published on May 22, 2019. This final rule removes the term handsets from paragraph (c)(2) and replaces it with the defined term ‘personal consumer

electronic devices,' which includes phones and other personally-owned equipment, such as a tablets, smart watches, and mobile hotspots such as MiFi devices.

This final rule also clarifies, to address questions from the public, that transactions under paragraph (c)(2) include support for personal use of the telecommunications hardware known as customer premises equipment (CPE), such as network switches, residential Internet gateways, set-top boxes, home networking adapters and other personally-owned equipment that enable consumers to access network communications services and distribute them within their residence or small business. Support of CPE is an additional example of the types of basic consumer or small business types of applications that were intended to be included within the scope of paragraph (c)(2). This final rule adds a definition of 'Customer Premises Equipment (CPE)' to paragraph (c)(2). As with the remainder of paragraph (c)(2), the authorization is limited to models of CPE that were available to the public on or before May 16, 2019.

Lastly, this final rule adds clarifying text to paragraph (c)(2) to specify that software for bug fixes, security vulnerability patches, and other updates to existing versions of the software necessary to provide service and support to existing 'personal consumer electronic devices' and CPE are under paragraph (c)(2) of the temporary general license, provided the software does not enhance the functional capacities of the original software or equipment. The May 22 rule used the phrase 'software updates and patches.' This final rule replaces that text with more specific text to improve public understanding for what software is eligible under paragraph (c)(2). As noted above, this final rule makes this same type of software clarification to the introductory text of paragraph (c)(1).

This final rule removes paragraph (c)(4) (Engagement as necessary for development of 5G standards by a duly recognized standards body). BIS has determined 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 would be a prohibited activity absent a license from BIS. Information, including technology, that is made available to the public without restrictions upon its further dissemination would not be subject to the EAR if the existing criteria of § 734.7 are met.

BIS has also received questions on the following issues regarding the treatment of imports and services involving Huawei and its sixty-eight non-U.S. affiliates on the Entity List:

- *Treatment of imports into the United States.* The Entity List does not create a license requirement for imports, including imports from entities on the Entity List.

- *Treatment of services.* The Entity List-list based license requirements apply to the export, reexport, and transfer (in-country) of items that are subject to the EAR. The Entity List-based license requirements do not apply to services, provided the service in question does not involve the export, reexport, or transfer (in-country) of items that are subject to the EAR. As part of providing a service, a person must determine whether there will be an export, reexport, or transfer (in-country) of any commodities, software, or technology requiring an EAR authorization. In addition, certain services may be controlled or prohibited under the EAR for other reasons. For example, a U.S. person is prohibited from engaging in exports, reexports, or transfers (in-country) related to certain end uses (as specified in § 744.6) or service an item subject to the EAR with “knowledge” of a violation (as specified in §§ 764.2(e) and 736.2(b)(10)).

Changes to certification statement under temporary general license and conforming change to EAR recordkeeping requirement

This final rule revises paragraph (d) (Certification statement) of the temporary general license by changing which party to the transaction is required to create the certification statement. This final rule removes the requirement under paragraph (d) for the exporter, reexporter, or transferor to create a certification statement and adds in its place a requirement under paragraph (d) that the exporter, reexporter, or transferor obtain a certification statement and any additional support documentation needed to substantiate the certification statement from the listed Huawei entity that is to receive the items. The certification statement must be obtained from the pertinent Huawei entity prior to

exporting, reexporting, or transferring (in-country) any item under the temporary general license. This final rule also makes other clarifying changes to paragraph (d) related to the obligations of the parties to the transaction as it relates to the certification statement.

This final rule makes changes to paragraph (d) by redesignating some of the text as introductory text to paragraph (d), deleting certain text that is no longer needed, and adding new paragraphs (d)(1) (Certification statement required from Huawei or one of its listed non-U.S. affiliates) and (d)(2) (Certification statements may be used for multiple exports, reexports, and transfers (in-country)), as described further below. Paragraph (d)(1) also adds a recordkeeping requirement to specify that the exporter, reexporter, or transferor and the pertinent Huawei entity are each responsible for retaining the certification statement and any additional support documentation needed to substantiate the certification statement for purposes of the EAR recordkeeping requirements under part 762.

New paragraph (d)(1) describes the general requirements for the certification statement, *e.g.*, that the certification statement must be in writing and must be obtained by the exporter, reexporter, or transferor prior to the export, reexport, or transfer (in-country) that is being made under the temporary general license. New paragraph (d)(1) also describes the types of documentation that is needed in order to confirm whether the criteria of paragraph (c)(1) are met when an export, reexport, or transfer (in-country) is in support of a ‘fully operational network.’

This final rule adds paragraphs (d)(1)(i)-(v) to specify the information that must be included in the certification statement. Paragraph (d)(1)(i) requires identifying the Huawei entity receiving the items and making the certification statement, and paragraph

(d)(1)(ii) requires identifying the items and quantity thereof (for tangible shipments of commodities and software) involved. The Huawei entity must also certify in a single certification statement that: under paragraph (d)(1)(iii), the end-use of the items to be received will be for an end-use within the scope of a specified authorizing paragraph under paragraph (c) of the temporary general license; under paragraph (d)(1)(iv), the entity will comply with the recordkeeping requirements in part 762, including by providing copies of the certification statements and all other records required under the EAR to any authorized agent, official, or employee of BIS, the U.S. Customs Service, or any other agency of the U.S. Government as required in § 762.7; and under paragraph (d)(1)(v), the individual signing the certification statement has sufficient authority to legally bind the entity.

This final rule also adds a new paragraph (d)(2) (Certification statements may be used for multiple exports, reexports, and transfers (in-country)) to clarify that certification statements obtained under paragraph (d)(1) may be used for multiple exports, reexports, or transfers (in-country) of the same item(s) under the temporary general license provided the information included in the certification statement is still accurate for those additional exports, reexports, or transfers (in-country). New paragraph (d)(2) specifies that if multiple exports, reexports, or transfers (in-country) are made against the same certification statement obtained under paragraph (d)(1), 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 specific certification statement.

Lastly, paragraph (d)(2) requires the log or other similar record be retained in accordance with the part 762 recordkeeping requirements.

As a conforming change, in § 762.2 (Records to be retained), this final rule revises paragraph (b)(55) to reference the log or other similar record required by paragraph (d)(2) if multiple exports, reexports, or transfers (in-country) are made against the same paragraph (d)(1) certification statement and any additional support documentation needed to substantiate the certification statement.

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). ECRA, as amended (50 U.S.C. 4801-4852), 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.

In addition to the one collection referenced above, the Commerce Department requested, and OMB authorized, emergency modification of a currently approved information collection 0694-0122, *Miscellaneous Licensing Responsibilities and Enforcement*, involved in today's rule, consistent with 5 CFR 1320.13. The modification of this additional information collection is needed because this final rule will impose requirements on exporters, reexporters, and transfers to obtain a certification statement from Huawei and its non-U.S. affiliates on the Entity List prior to receiving items under a temporary general license under the EAR.

The total estimated annual burden hours for this collection will increase from 96,618 hours to 97,405 hours (an increase of 787 hours) due to the changes included in this final rule.

This emergency collection is needed in order for today's rule to establish a requirement for exporters, reexporters, or transferors to obtain a certification statement from Huawei and its non-U.S. affiliates on the Entity List prior to making exports, reexports, or transfers (in-country) to these listed entities. This action is needed immediately to protect national security and foreign policy interests of the United States to help better ensure that exports, reexports, and transfers (in-country) being made under the temporary general license will be done in accordance with the requirements of the temporary general license.

If this emergency collection were delayed to allow for public comment before becoming effective, U.S. national security and foreign policy interests may be undermined if exports, reexports, or transfers (in-country) are made under the temporary general license that should not have been. The certification requirement included in this

final rule is added to ensure appropriate written communication is occurring between Huawei and its non-U.S. affiliates on the Entity List with exporters, reexporters, and transfers prior to items being exported, reexported, or transferred (in-country) under the temporary general license. BIS intends to publish a notice in the *Federal Register* informing the public that DOC submitted a request for an emergency collection and the request was approved by OMB.

The Department has determined the following conditions have been met:

- a. The collection of information is needed prior to the expiration of time established under the PRA for normal clearance procedures.
- b. The collection of information between these parties to exports, reexports, and transfers (in-country) made under the temporary general license is essential to the mission of the Department, in particular to ensure the proper use of a temporary general license under the EAR.
- c. The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information. Compliance with normal clearance procedures would prevent the collection of information between the parties and may increase the likelihood of exports, reexporters, or transfers (in-country) that would otherwise fall outside the scope of the temporary general license.

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 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 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).

Supplement No. 7 to part 744 – [AMENDED]

2. Supplement No. 7 to part 744 is amended by revising the introductory text of the supplement and paragraphs (a), (b)(1), (c), and (d) to read as follows:

SUPPLEMENT NO. 7 TO PART 744—TEMPORARY GENERAL LICENSE

Notwithstanding the requirements and other provisions of Supplement No. 4 to this part, which became effective on May 16, 2019, as to Huawei Technologies Co., Ltd.

(Huawei), Shenzhen, Guangdong, China, and its non-U.S. affiliates (listed in this supplement and Supplement No. 4 to this part), the licensing and other requirements in the EAR as of May 15, 2019, are restored in part as of May 20, 2019, and through November 18, 2019, pertaining to exports, reexports, and transfers (in-country) of items subject to the EAR to any of the listed Huawei entities. The licensing and other policies of the EAR that were in effect as of May 15, 2019, are available to export, reexport, or transfer (in-country) such items to the listed Huawei entities if the transaction meets the conditions of paragraph (b) of this supplement, is limited in scope to one or more of the activities described in paragraphs (c)(1) through (3) of this supplement, and if the transaction parties satisfy the requirements of paragraph (d)(1) of this supplement and, if applicable, paragraph (d)(2) of this supplement. Thus, for example, the authority of NLR or a License Exception that was available as of May 15, 2019, may be used in connection with a transaction 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 those Huawei entities and affiliates added to the Entity List through the Federal Register documents listed in paragraphs (a)(1) and (2) of this supplement:

(1) *Addition of Entities to the Entity List*, published on 5/21/19.

(2) Non-U.S. affiliates of Huawei added to the Entity List on [INSERT DATE OF DISPLAY ON THE PUBLIC INSPECTION LIST].

(b) * * *

(1) This temporary general license is effective from May 20, 2019, through November 18, 2019.

* * * * *

(c) *Authorized transactions.* This temporary general license allows, from May 20, 2019, through November 18, 2019, the following:

(1) *Continued operation of existing networks and equipment.* BIS authorizes, subject to other provisions of the EAR, engagement in transactions necessary to maintain and support existing and currently ‘fully operational network’ and equipment, including software for bug fixes, security vulnerability patches, and other changes to existing versions of the software, subject to legally binding contracts and agreements executed between Huawei, or one of its listed non-U.S. affiliates, and ‘third parties’ on or before May 16, 2019. Such transactions may not enhance the functional capacities of the original software or equipment.

(i) *Exclusions.* (A) The authorization under paragraph (c)(1) of this supplement extends only to activities such as patching networks and network infrastructure equipment, not end-devices such as general-purpose computing devices that would not be considered to be part of an existing and ‘fully operational network.’ Paragraph (c)(1) of this supplement

does not authorize support for equipment that is not directly related to the support and maintenance of the network.

(B) The provision of the temporary general license under paragraph (c)(1) of this supplement does not authorize transfers of equipment for general business purposes or for activities that are not in direct support of an existing and ‘fully operational network’ (e.g., semiconductor production equipment).

(ii) [Reserved]

Note 1 to paragraph (c)(1): The term ‘third parties’ in paragraph (c)(1) of this supplement and the term ‘third party’ in Notes 2 and 3 to paragraph (c)(1) refer to a party that is not Huawei, one of its listed non-U.S. affiliates, or the exporter, reexporter, or transferor, but rather an organization such as a telecommunications service provider.

Note 2 to paragraph (c)(1): The term ‘fully operational network’ in paragraph (c)(1) of this supplement, as well as in paragraph (c)(3) of the supplement, refers to a ‘third party’ network providing services to the ‘third party’s’ customers.

(2) *Support to existing ‘personal consumer electronic devices’ and ‘Customer Premises Equipment (CPE)’.* BIS authorizes, subject to other provisions of the EAR, engagement in transactions necessary to provide service and support, including software for bug fixes, security vulnerability patches, and other changes to existing versions of the software, to existing Huawei ‘personal consumer electronic devices.’ Such transactions may not

enhance the functional capacities of the original software or equipment. For the purposes of this paragraph (c)(2), the term ‘personal consumer electronic devices’ is defined as including phones and other personally-owned equipment, such as a tablets, smart watches, and mobile hotspots such as MiFi devices. The authorized transactions under this paragraph (c)(2) include support for personal use of telecommunications hardware known as ‘Customer Premises Equipment (CPE),’ 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 within their residence or small business. The authorization conferred by this paragraph (c)(2) is limited to models of Huawei ‘personal consumer electronic devices’ and ‘CPE’ 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 to its listed non-U.S. affiliates of information regarding security vulnerabilities in items owned, possessed, or controlled by Huawei or any of its 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 network’ and equipment.

(d) *Certification statement.* Prior to making an export, reexport, or transfer (in-country) pursuant to the temporary general license, the exporter, reexporter, or transferor must obtain a certification statement and any additional support documentation needed to

substantiate the certification statement from the listed Huawei entity that will receive the item(s), as specified in paragraph (d)(1) of this supplement.

(1) Certification statement required from Huawei or one of its listed non-U.S. affiliates.

Prior to any export, reexport, or transfer (in-country) under the temporary general license to Huawei or any of its listed non-U.S. affiliates identified in paragraph (a) of this supplement, the exporter, reexporter, or transferor must obtain a certification statement from the entity that will receive the item(s). The temporary general license also requires the party exporting, reexporting, or transferring (in-country) an item “subject to the EAR” to obtain, from the listed Huawei entity receiving the item, a certification statement under paragraph (d) of this supplement specifying how the export, reexport, or in-country transfer satisfies the provisions of the temporary general license, including specifying whether the activity or activities that will be supported by the transaction fall within paragraph (c)(1), (2), or (3) of this supplement. In order to substantiate the certification statement for transactions that fall within paragraph (c)(1), the exporter, reexporter, or transferor must obtain documentation from Huawei or one of its listed non-U.S. affiliates showing that there was a legally binding contract or agreement executed between the listed Huawei entity and a ‘third party’ on or before May 16, 2019. The exporter, reexporter, or transferor and the listed Huawei entity are each responsible for retaining the certification statement and any additional support documentation needed to substantiate the certification statement under paragraph (d). *See* part 762 of the EAR for record retention requirements. The certification statement must be in writing (which may be conveyed by email), be signed and dated by an individual of sufficient authority to

legally bind the listed entity, and shall provide the information required in paragraphs (d)(1)(i) and (ii) of this supplement and the certifications specified in paragraphs (d)(1)(iii) through (v) of this supplement.

(i) Name of the entity; complete physical address, to include shipping, corporate, and end user addresses, if different (simply listing a post office box is insufficient); telephone number; e-mail address; website (if available); and name and title of individual signing the certification statement;

(ii) A complete list of the item(s), including the applicable Export Control Classification Number(s) or designation (if EAR99) for the item(s) under the EAR, and (for tangible shipments of commodities and software) the quantity or quantities of the item(s) that will be exported, reexported, or transferred under the authority of the temporary general license (this inclusive list may cover multiple exports, reexports, or transfers (in-country) under the temporary general license of the same item(s); *see* paragraph (d)(2) of this supplement);

(iii) The end-use of the item(s) to be received as an export, reexport, or transfer (in-country) falls within the scope of a specified authorizing paragraph under paragraph (c) of this supplement (a general statement or declaration that the item falls within the scope of paragraph (c) or the scope of the temporary general license will not be sufficient, as the specific authorizing paragraph under paragraph (c) must be identified);

(iv) The entity will comply with the recordkeeping requirements in part 762 of the EAR, including by providing copies of the certification statement and all other export, reexport, or transfer (in-country) records required to be retained in part 762 to any authorized agent, official, or employee of BIS, the U.S. Customs Service, or any other agency of the U.S. Government as required in § 762.7 of the EAR; *and*

(v) The individual signing the certification statement, on behalf of the consignee identified in paragraph (a) of this supplement, has sufficient authority to legally bind the entity.

(2) *Certification statements may be used for multiple exports, reexports, and transfers (in-country).* Exporters, reexporters, and transferors may rely on the certification statements obtained under paragraph (d)(1) of this supplement for multiple exports, reexports, and transfers (in-country) involving the same item(s) to the same consignee/end-user, provided the information included remains accurate for those additional exports, reexports, and transfers (in-country). If one certification statement is used for multiple exports, reexports, or transfers (in-country) made pursuant to the temporary general license, the exporter, reexporter, and transferor must maintain a log or other similar record that identifies each such export, reexport, and transfer (in-country) against that specific certification statement. The log or other similar record must be retained in accordance with part 762 of the EAR.

PART 762—[AMENDED]

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

Authority: 50 U.S.C. 4801-4852; 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 by revising paragraph (b)(55) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(55) Supplement No. 7 to part 744, Temporary General License Certification Statements and logs or other records required, including any additional support documentation needed to substantiate the certification statement, under paragraph (d) of Supplement 7 to part 744 of this chapter.

* * * * *

Dated: August 15, 2019.

Nazak Nikakhtar,
Assistant Secretary of Industry and Analysis,
International Trade Administration,

Performing the Non-Exclusive Duties of the Under Secretary of Industry and Security.

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