

International Trade Alert

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Commerce Offers 15-Day Comment Period on Huawei TGL and Extends Validity Until May 15, 2020

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Key Points

- BIS extended until May 15, 2020, the **Temporary General License** authorizing certain exports, reexports, and transfers to Huawei and other listed affiliates of specific types of items that are relevant to third parties.
- BIS has also requested comments on whether the TGL should be further extended, calling for specific feedback in five areas related to the TGL and its implications for Huawei's suppliers and customers.
- The public comment period will be open until March 25, 2020.
- BIS has previously indicated its intent to eventually allow the Huawei TGL to expire, and some officials had suggested the April 1, 2020 extension could have been the last. Accordingly, it is of critical importance that companies and organizations who currently use the TGL consider submitting comments and engaging with BIS on this issue.

Background

On May 16, 2019, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) added Huawei and 68 of its non-U.S. affiliates to the Entity List (**Supp. No. 4 to 15 CFR Part 744**). As a result of this designation, all commodities, software, and technology "subject to the Export Administration Regulations" (EAR) require a license to be exported, reexported, or transferred (in-country) to a listed entity. Additionally, on May 21, 2019, BIS published a Temporary General License (TGL), effective May 20, 2019, authorizing specified actions that were otherwise prohibited by the addition of Huawei and related entities to the Entity List (**Supp. No. 7 to 15 CFR Part 744**) (see our related reporting on these developments [here](#) and [here](#)).

TGL Renewals and Revisions

Since it first published the Huawei TGL last May, BIS extended its validity date four times. As we previously [reported](#), BIS first extended and narrowed the scope of the TGL on August 19, 2019, at which time it also created and amended Entity List entries

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for more than 40 additional Huawei entities. This extension applied through November 18, 2019, but BIS extended it a second time until February 16, 2020, and a third time until April 1, 2020.

May 15 Extension and Request for Comments

On March 12, BIS published a final rule (85 Fed. Reg. 14416) extending the TGL for what could be the final time until May 15, 2020. In a companion notice, however, BIS has also called for comments on further extensions to the TGL (85 Fed. Reg 14428).

In that notice, BIS specifically requests comments on the impact on “companies, organizations, individuals, and other impacted entities” in the following areas:

1. What would be the impact on your company or organization if the temporary general license is not extended?
2. Given the TGL was implemented to prevent the interruption of existing network communication systems and equipment, as set forth in paragraphs (c)(1) through (3) of the TGL, and allow time for companies and persons to shift to other sources of equipment, software and technology (i.e., those not produced by Huawei or one of its listed affiliates), what would be required for your organization or industry to achieve such an end-state? For your industry or organization how long would it take until the authorization(s) in the temporary general license would no longer be required? What are costs associated with this shift and are there issues where the prohibited equipment, software and technology are prevalent and alternative solutions may not be available? Are there specific use cases where cessation of use is not feasible?
3. If the TGL is extended, what potential revisions should BIS consider to enhance effectiveness for both covered transactions and transactions outside of the scope of the temporary general license?
4. What potential alternatives to either extending the TGL or allowing it to expire will facilitate compliance with the supplemental requirements of the Entity List entries for Huawei and its listed affiliates while reducing complexity for implementation purposes?
5. There may be further costs associated with the current extension or non-extension of the current TGL (e.g., lost business opportunities) – *what* are they and what additional guidance should BIS consider?

BIS will accept comments for 15 days from the date of the public inspection notice, i.e., March 25, 2020.

Special Procedures for Business Confidential Information

In an unusual step, BIS issued procedures for submitting business confidential information in public comments. According to the notice:

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” or “P” will be assumed to be public and will be made publicly available through <http://www.regulations.gov>.

Conclusion

Although BIS has significantly tightened the already-narrow TGL since its first publication in May 2019, the TGL remains an important exception to the Entity List restrictions for companies that use, supply, and support existing Huawei equipment throughout the world. In light of earlier indications that BIS intends to eventually allow the TGL to expire, it is of critical importance that exporters who currently rely on the TGL engage with BIS through and after the public comment period. The comment period also offers an opportunity for those who have considered engaging Huawei under the auspices of the TGL to recommend revisions or alternatives that might permit and encourage otherwise beneficial transactions that are consistent with BIS’s national security objectives and the policies underlying the TGL. Commenters should also take advantage of BIS’s procedures for submitting business confidential information in their comments, as such information is likely to be highly probative in BIS’s assessment of its next actions ahead of the new May 15 expiration deadline.

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