

BIS Extends Huawei Temporary General License and Clarifies Certain Limitations

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On August 19, 2019, the Bureau of Industry and Security (BIS) released two announcements regarding Huawei, which was added to the Entity List earlier this year along with 68 associated companies. First, BIS announced that it was extending the Temporary General License (TGL) that was set to expire August 19, 2019, allowing continued maintenance activities to existing Huawei networks and devices until November 18, 2019. Second, BIS added an additional 46 Huawei-affiliated companies to the Entity List.

1. Temporary General License Revisions

Huawei was initially added to the Entity List on May 16, 2019. Shortly thereafter, effective May 22, BIS issued a 90-day TGL that allowed a narrow set of maintenance activities, such as software patches and updates to existing Huawei networks. The original TGL was set to expire August 19, the same day that BIS announced this additional 90-day extension.

This extension makes several revisions to the provisions of the original TGL and extends the expiration date to November 19, 2019. Revisions to the original TGL primarily focus on clarifying the types of transactions that are authorized under the TGL. The original TGL provided four categories of allowed transactions:

- (1) Continued operation of existing networks and equipment 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 necessary to provide service and support, including software updates or patches to existing Huawei handsets.
- (3) Cybersecurity research and vulnerability disclosures 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.

The updated TGL clarifies the first provision is quite narrow by specifying what aspects of an operational network may be maintained or supported. Importantly, it clarifies that end-devices such as the computers and devices one might use to access and use an existing network are not contemplated by the license. Rather, only maintenance of network and network infrastructure equipment is covered. The new language is here:

(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.

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).

The supplement also further defines “third parties” to “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.”

The updated TGL also clarifies that the second provision, regarding consumer handsets, allows support such as “software for bug fixes, security vulnerability patches, and other changes to existing versions of the software” and specifies the types of devices covered, including “tablets, smart watches, and mobile hotspots such as MiFi devices.” Further, it specifies that the TGL only authorizes maintenance of personal device models that were available to the public on or before May 16, the date of Huawei’s addition to the Entity List.

The updated TGL makes no significant revisions to the third provision, but entirely removes the fourth provision regarding development of 5G standards.

Finally, the TGL specifies that the certification statement required in the original TGL must come from the entity that will receive the item: “the exporter, reexporter, or transferor must obtain a certification statement from the entity that will receive the item(s).” Further, the exporter must obtain a certification statement stating whether the activities fall within the three exclusion provisions of the TGL, and must obtain documentation from the Huawei entity showing that there was a legally binding contract prior to May 16, 2019.

2. Additional Huawei Affiliates Added to the Entity list

After a review by the End-User Review Committee (“ERC”), BIS added an additional 46 Huawei affiliates to the Entity List, with 27 “added under new, separate entries, and the other nineteen added under the existing entry for Huawei.” These additional entities were added “because they present a significant risk of acting on Huawei’s behalf to engage in activities determined to be contrary to the national security or foreign policy interests of the United States.” The new additions include Huawei subsidiaries in countries that were not previously identified.

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