

Bureau of Industry and Security

BIS 2020

POLICY AND REGULATORY UPDATES

A DIGITAL EXPERIENCE

September 2, 2020



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The Entity List: Understanding and Managing the Impact

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The Entity List - Summary

- Entities are added for engaging in activities contrary to U.S. national security or foreign policy interests
- Entity List additions, removals or modifications are interagency decisions
 - Majority vote to add
 - Unanimous vote to remove
- The List imposes a license requirement on the export, reexport and/or transfer (in-country) of U.S.-origin items to listed entities
 - Items in the U.S.
 - Items made in the U.S.
 - Items made abroad with certain U.S. parts/technology
- In nearly all cases...
 - A license is required for all items, even unlisted items (EAR99)
 - BIS will review applications for such licenses with a presumption of denial

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The Entity List – Snapshot

- Currently over 1,400 entities on the Entity List, in over 75 countries
 - 2020: Over 70 entities in four rules (to date)
 - 2019: Over 200 entities in seven rules
- Seven entities removed in 2019-2020 (to date)
- Recent noteworthy additions:
 - 48 entities added since October 2019 for engaging in or enabling human rights violations and abuses in the implementation of China's campaign of repression in the Xinjiang Uighur Autonomous Region
 - Huawei Technologies and 152 of its non-U.S. affiliates since May 2019

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The Entity List – Understanding the Impact

- §744.11(a) supplements other EAR license requirements
 - Establishes a license requirement, not a complete prohibition
- No established duration for entities to remain on the Entity List
- License requirement takes effect upon publication as a Final Rule
- In most cases, shipments *en route* at the time of listing may continue to an added entity via a Savings Clause
- License requirement applies to all parties to the transaction*

* Rule published August 20, 2020

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The Entity List – Understanding the Impact (cont.)

- The license requirement affects transactions with legal entities
 - Includes all parts of a legally-distinct entity
 - Does not include separate legal entities such as distinct subsidiaries, sister companies, etc.
 - Entities are captured wherever located
 - Additional addresses may be added to entries at later dates
- No license exceptions available for export to listed parties
- The license requirement applies to employees of listed entities
- Be aware – the process for reviewing requests for removal is detailed and thorough

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The Entity List – Managing the Impact

- The Entity List frequently changes – monitor and conduct regular screening
 - 20 Entity List-related rules published since January 2019
 - USG policy initiatives may result in the listing of additional entities
 - Affiliates of listed entities may be added in subsequent rules
- Red Flags and the Entity List. Examples:
 - A customer (or its address) is similar to a listed party
 - A freight forwarding firm is listed as the product's final destination
- Do not self-blind!
 - Understand relationships between listed and unlisted parties, if affiliated
 - Determine if business with a listed entity includes transactions or items subject to the EAR

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The Entity List – Managing the Impact (cont.)

- License requirement affects exports, reexports and transfers (in-country) to listed entities, to include existing customers
 - May impact service, repair or maintenance for items previously exported
- If pursuing a license for export to a listed entity:
 - Clearly understand why the entity was listed
 - Include additional information to overcome the Presumption of Denial
 - Know and describe the end-use of the item to be shipped

License applications for export to listed parties are reviewed by BIS.

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Contact Information

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