

Commerce Adds 50 Foreign Entities to the Unverified List (and Removes 10)

April 11, 2019

Key Points

- The Commerce Department's Bureau of Industry and Security (BIS) has added 50 entities to its Unverified List (UVL). Thirty-seven of the newly listed entities are in China. BIS also removed 10 entities from the list that had appealed their listings in accordance with a process set out in the Export Administration Regulations (EAR). View full report [here](#).
- Entities on the Unverified List are not subject to embargoes. Rather, U.S. and foreign persons must conduct additional due diligence before exporting, reexporting, or transferring to listed entities commodities, software, or technology subject to U.S. jurisdiction that do not normally require a license. For items that could normally be shipped to the entities under a license exception, one must now apply for and receive a license before proceeding. Also, U.S. exporters must file Electronic Export Information (EEI) for exports of tangible items to entities on Unverified List, regardless of value or destination.
- As a result of this development, U.S. and non-U.S. companies and others should update their internal control program screens to ensure compliance with the new requirements.

The Unverified List (UVL) contains the names and addresses of foreign entities about which the Commerce Department's Bureau of Industry and Security (BIS) has concerns. The list is in Supplement Number 6 to Part 744 of the Export Administration Regulations (EAR). BIS has not alleged that the UVL entities have violated the EAR and has not added the entities to the Entity List. Rather, BIS has questions about their *bona fides*, such as whether they are legitimate organizations. As described in EAR section 744.15(c), BIS has the authority to add entities to the UVL if, for example, BIS was not allowed to conduct an on-site verification of items exported or to be exported to the entity.

For those exporting, reexporting, or transferring to a listed entity commodities, software, or technology subject to the EAR, but that do not require a BIS license, they must treat the entity's inclusion on the UVL as a "red flag." (Commodities, software, and technology are "subject to the EAR" if they are (i) made in the United States, (ii)

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shipped from the United States, regardless of origin, (iii) foreign-made items containing more than a *de minimis* amount of U.S.-origin controlled content, or (iv) the direct product of certain types of U.S.-origin controlled software or technology.) The presence of a “red flag” triggers additional due diligence obligations, such as needing to verify that the transaction does not violate the EAR.

The primary regulatory due diligence obligation is to obtain from the UVL entity a “UVL statement” before proceeding with an export, reexport, or transfer of an item subject to the EAR. The UVL statement must be signed by the UVL entity and contain specific obligations described in EAR section 744.15(b). For example, the UVL entity must agree in its statement to (i) comply with the EAR, (ii) identify the end use, end user, and ultimate destination of the items being shipped, (iii) cooperate with BIS end-use checks, and (iv) provide copies of records the EAR require be maintained.

Also, EAR section 758.1(b)(8) requires U.S. exporters to file Electronic Export Information (EEI) for exports of tangible items involving UVL entities, regardless of value or destination.

In addition, as described in EAR section 740.2(a)(17), U.S. and foreign persons may not use an EAR license exception to export, reexport, or transfer to a UVL entity items subject to the EAR. One must apply to and receive from BIS a license to export, reexport, or transfer such items.

In section 744.15(d), the EAR describes a process for a listed entity to request removal from the UVL. In essence, the entity must demonstrate in writing its *bona fides* to BIS enforcement officials, such as why it is a legitimate and reliable party to a transaction involving items subject to the EAR.

The implications of being on the UVL are not as dramatic as being on the Entity List, which results in effective prohibitions on the ability of U.S. and foreign persons to export, reexport, or transfer any commodity, software, or technology subject to the EAR. The regulatory obligations related to transactions with and by entities on the UVL are nonetheless significant in that failure to abide by them can result in civil and criminal penalties, even with respect to transactions that historically would not have required specific authorizations.

BIS created the UVL in 2002 and updated the rules pertaining to it in 2013 to provide the U.S. Government with increased visibility into exports, reexports, and transfers of items subject to the EAR that involve entities whose *bona fides* could not be verified for reasons beyond BIS’s control. Click [here](#) for more information.

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