

Summary of Comments Related to New Information Collection Request “Procedure of Parties on the Entity List to Request Removal or Modification of their Listing (OMB Number 0694-0134)”

This collection of information relates to one section of a draft final rule entitled “Authorization to Impose License Requirements for Exports or Reexports to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States” (RIN 0694-AD82). That section (which would be at 15 CFR § 744.16) creates a procedure for parties who are listed on the Entity List (15 CFR Part 744, Supp. No. 4) to request that their listing be removed or modified. Although BIS has entertained and made decisions on requests to remove or modify a listing in the past, the Export Administration Regulations have not previously stated that such requests may be made or provided guidance on how to make them.

A party’s presence on the Entity List indicates that exports and reexports to that party require a license. The license requirement is stated on the Entity List and may apply to all items that are subject to the Export Administration Regulations or may apply to a limited range of items related to the concerns for which the party was added to the Entity List. An Entity List Entry may also specify policies under which applications to export or reexport to listed party will be evaluated and the license exceptions (if any) that may be used for export or reexports to that party. Pursuant to the rule associated with this collection, a listed party might request that its name be removed from the list, that its listing be restricted to only certain sub-units, that the range of items in it’s listing be reduced, that certain license exceptions be permitted or that the policy of license application review that applies to it be modified.

Of the five comments on the proposed rule, two addressed proposed 15 CFR § 744.16. None of the comments addressed the burden that would be imposed by this collection. Rather, the comments related to the procedure by which decisions on such requests would be made. The commenters made the following points:

- Persons seeking removal have a vital need for information about the removal process.
- Given the broad criteria for listing, senior level officials should have a greater role in the process.
- Persons whose request for denial is denied by the interagency review committee should have an express right of appeal.
- There should be a transparent and reasonable process that allows the listed party to be removed.
- Failure to provide a transparent and rational process raises serious issues under the national treatment provisions of the WTO treaty.

BIS responded to these comments by adding the End-User Review Committee's procedures as a supplement to the EAR in the draft final rule to be located at 15 CFR Part 744 Supp. No. 5. This committee makes all decisions to add, remove or modify an entry on the Entity List. The committee's procedures require a unanimous vote to remove or modify an entry. Any member agency that disagrees with the result may escalate the decision to the Advisory Committee on Export Policy. The Advisory Committee on Export Policy is composed of assistant secretarial level representatives of the Departments of State, Defense, Energy and Commerce and makes decisions by majority vote. Any member agency that is dissatisfied may escalate the decision to the Export Administration Review Board, which consists of the Secretaries of State, Defense and Commerce as voting members and the Chairman of the Joint Chiefs of Staff and the Director of National Intelligence.

BIS did not create an express right of appeal by the listed party. BIS is not aware of any treaty provision that this rule would contravene.

BIS's response to these comments are discussed in the preamble to the draft final rule under the heading "Comments concerning § 744.16 - Procedure for requesting removal or modification of an Entity List entry." Copies of all comments are included in this package.