

SUPPORTING STATEMENT
U.S. Department of Commerce
Bureau of Industry and Security
Entity List and Unverified List Requests
OMB Control No. 0694-0134

This is a request to revise the collection by adding a voluntary procedure that parties on the Unverified List (UVL) may use to request removal from the list. The collection title will be changed from “Entity List Requests” to the title as stated above. This procedure is similar to the existing Entity List procedure. This request also supports publication of the proposed rule “Proposed Revisions to the Export Administration Regulations (EAR): Unverified List (UVL)” (RIN 0694-AF70).

A. Justification

1. Explain the circumstances that make the collection of information necessary.

This collection provides a mechanism for foreign persons (including businesses, research institutions, government and private organizations, individuals, and other types of legal persons) listed on the Entity List to request removal or modification of the entry that affects them. The Entity List appears at 15 C.F.R. Part 744, Supp. No. 4. The Entity List is used to inform the public of certain parties whose presence in a transaction that is subject to the Export Administration Regulations (EAR) (15 C.F.R. 730 – 799) requires a license from the Bureau of Industry and Security (BIS). Exports, reexports, and/or transfers (in-country) of EAR items to persons named on the Entity List are subject to licensing requirements and policies in addition to those elsewhere in the EAR.

This collection also provides a mechanism for foreign persons listed on the Unverified List (UVL) to request removal of the entry that affects them. Unlike the Entity List, which allows for the establishment of license requirements of varying scope and subject to varying review policies on an entry-by-entry basis, the UVL imposes identical restrictions on all exports, reexports, or transfers (in-country) subject to the EAR to listed persons. As a result, BIS does not anticipate the need for listed persons to request modification of an UVL entry. The UVL is proposed for publication at 15 C.F.R. Part 744, Supp. No. 6. The UVL informs the public of certain persons whose *bona fides* could not be verified, and whose presence in a transaction subject to the EAR raises a red flag. The Bureau of Industry and Security proposes to strengthen the UVL by:

- 1) Requiring exporters to file an Automated Export System (AES) record for all exports subject to the EAR to persons listed on the Unverified List;
- 2) Suspending the availability of license exceptions for exports, reexports, and transfers (in-country) to persons listed on the UVL; and
- 3) Requiring exporters to obtain a statement (UVL statement) from UVL-listed persons before proceeding with exports, reexports, and transfers (in-country) to such persons of items not subject to a license requirement under the EAR, i.e., designated No License Required (NLR).

BIS’s authority to control exports, reexports, and transfers (in-country) of items subject to the EAR, for reasons outlined in part 744 of the EAR, is based on the Export Administration Act (EAA) of 1979, as amended. Although the EAA has lapsed, BIS’s continuing authority under

the EAR to exercise these controls is based on an Executive Order issued pursuant to the International Emergency Economic Powers Act.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

Section 744.16 of the EAR provides the procedure by which a party who is listed on the Entity List may request that its listing be removed or modified. Such requests are provided in writing and are reviewed by the End-User Review Committee (ERC), which is comprised of the Departments of Commerce, State, and Defense, and Energy, and the Treasury as appropriate, and chaired by the Department of Commerce.

These decisions are made on a case-by-case basis and are dependent upon both the information provided by the requestor, the reason(s) for which the entity was placed on the list, and the policies in effect at the time of the request. In every case, BIS shares the information provided by the requestor with the other agencies. The interagency decision, as communicated to the requesting entity by BIS, is the final agency action on such a request.

Proposed Section 744.15 of the EAR provides the procedure by which a person listed on the Unverified List may request the removal of its listing. Such requests are provided in writing and are reviewed by BIS. Decisions to remove persons from the UVL are based on BIS's ability to resolve concerns related to the *bona fides* of such persons (i.e., their suitability and reliability as parties to exports, reexports, and transfers (in-country) of items subject to the EAR). Such decisions are based on a variety of factors, including the cooperation of listed persons in end-use checks conducted by or on behalf of BIS and information submitted by such persons demonstrating their *bona fides* (basically demonstrate that they are a real legitimate business and not a front company set up to facilitate illegal diversions. The reason they get on this UVL in the first place is that BIS tried and were unable to verify that they are a legitimate company).

BIS does not disseminate to the public the information received pursuant to this collection. However, if the information were to result in the modification or removal of an Entity List entry, or the removal of an UVL entry, the modification or removal would be implemented and available for public view via an amendment to the Code of Federal Regulations.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

BIS has not developed a specific automated system for processing removal of Unverified List entries. However, BIS maintains a designated physical address, fax number, and e-mail address to which submissions covered by this collection may be sent. The address is listed in Section 744.15 of the EAR, and the fax number and e-mail address are posted on BIS's website. Persons

listed on the Unverified List have the option of using either of these methods to submit their requests.

Entities on the Entity List are located outside of the United States, and BIS receives an average of only about eight submissions per year. In addition, the information that is requested as part of the review is specific to that submission and may vary widely depending on the nature of the entity and the reason for which that entity was placed on the list. To design a specific automated system for such a small number of dispersed entities would be impractical. BIS maintains a designated physical address, fax number, and e-mail address to which the submissions covered by this collection may be sent. The address is listed in Section 744.16 of the EAR, and the fax number and e-mail are posted on BIS's website. Listed entities have the option of using any of these three methods to submit their requests.

4. Describe efforts to identify duplication.

This collection would be used only upon the addition of an entity to the Entity List, pursuant to a decision by the ERC, or the addition of a person to the Unverified List pursuant to a decision by BIS. This collection is intended to enable the listed entity or person to supply the Federal Government with information that the government otherwise would not have, or to communicate an intent to cooperate with an end-use check, in order to support a requested modification or removal from the Entity List or removal from the Unverified List.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This information is submitted voluntarily and only when an entity or person included on the Entity List or Unverified List submits a request that it be removed from the applicable list. Any listed entity, regardless of size, has the opportunity to submit as much or as little information as it wishes, has complete control over the timing of its submission, and can choose to use whatever format it wishes. Thus, the burden is self-determined by the entity.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This information collection is conducted only when a listed entity seeks modification of its listing on or removal from the Entity List or Unverified List. Any change in the frequency or if not conducted, BIS will be unable to meet its obligation to the Entity List and UVL procedures.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

There are no special circumstances that require the collection to be conducted in a manner

inconsistent with the guidelines in 5 CFR 1320.6.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The notice requesting public comment will be published as part of the proposed rule.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

BIS does not provide any payment or gift to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

BIS has no plans to give respondents any specific assurances of confidentiality. To the extent that the information provided is subject to its confidentiality requirement, Section 12(c) of the Export Administration Act restricts BIS's ability to disclose such information. However, respondents might offer a wide variety of information to justify their positions. Without knowing in advance the nature of that information, BIS is not in a position to know which, if any, Freedom of Information Act disclosure exemption would apply to any given submission made under this collection.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

BIS believes that collections associated with requests for removal of Unverified List entries will result in an overall burden of about 30 hours annually. The UVL has been in existence since 2002. In the six years from the establishment of the UVL until its last modification in 2008, BIS removed 10 persons from the list. Based on this, BIS estimates two requests for removal of UVL entries annually. **Two requests per year X 15 to prepare and submit each request = 30 hrs.**

Assuming average labor cost of \$35 per hour, the estimated total annual cost to respondents would be \$1,050.

BIS estimates that collections associated with requests for modification or removal of Entity List entries will result in an overall burden of about 105 hours annually. The Entity List has been in existence since 1997. In 2010, BIS received approximately seven requests to modify or remove existing Entity List entries. Based on this number of requests, BIS estimates **seven requests per year X 15 hours to prepare and submit each request = 105 annually. This remains unchanged.**

Assuming average labor cost of \$35 per hour, the estimated total annual cost to respondents would be \$3,675.

However, as each request is unique to the requesting entity's situation (*e.g.* size, structure), the associated burden of time and cost will fluctuate accordingly and is self-determined.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

None.

14. Provide estimates of annualized cost to the Federal government.

The annual cost to the Federal Government of reviewing Entity List appeals is approximately \$17,360. This estimate is based on the Chair and staff of the ERC spending forty hours to review each of seven requests per year at \$62 per hour.

The annual cost to the Federal Government of reviewing Unverified List appeals is approximately \$4,960. This estimate is based on the Deputy Assistant Secretary for Export Enforcement and BIS Export Enforcement staff spending forty hours to review each of two requests per year at \$62 per hour.

15. Explain the reasons for any program changes or adjustments reported.

There is an increase in responses (2) and burden hours (30) to support publication of the proposed rule "Proposed Revisions to the Export Administration Regulations (EAR): Unverified List (UVL)" (RIN 0694-AF70) which adds a voluntary procedure that parties on the UVL may use to request removal from the list.

16. For collections whose results will be published, outline the plans for tabulation and publication.

BIS does not publish the contents of the submissions or statistics based on the submissions. If a submission results in a change to the Entity List or Unverified List, that change is implemented via publication of an amendment to the Code of Federal Regulations.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

BIS does not require the use of a form. Therefore, display of the expiration date is not required.

18. Explain each exception to the certification statement identified .

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.