

August 6, 2007

U.S. Department of Commerce
Bureau of Industry and Security
Regulatory Policy Division
Room H2705
14th Street and Pennsylvania Avenue, NW
Washington, DC 20230

Attention: RIN 0694-AD82

RE: Comments on Proposed Rule – 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

Dear Sir or Madam,

The Wisconsin Project on Nuclear Arms Control submits the following comments in response to the Bureau of Industry and Security's June 5, 2007, Proposed Rule (72 Fed. Reg. 31005), which proposes to expand the scope of reasons for which BIS may add parties to the Entity List.

The Project is a non-profit organization that conducts outreach and public education to inhibit the proliferation of mass destruction weapons and their means of delivery. For more than twenty years, the Project has pursued its mission by advocating strong and effective export and transit controls worldwide. The Project commends the Commerce Department for considering measures to strengthen the Entity List, and supports the proposed change in principle. However, additional actions are necessary to ensure that the List serves its original, intended function as a key nonproliferation tool in the U.S. dual-use export control system.

In the Proposed Rule, BIS seeks authorization to add to the Entity List entities that BIS has reasonable cause to believe, based on specific and articulable facts, have been, are or pose a risk of being involved in activities that are contrary to the national security or foreign policy interests of the United States, or those acting on behalf of such entities. This would be a broad and beneficial control, allowing BIS to conduct more prior reviews of exports to risky end-users. In particular, BIS should use the proposed new Section 744.11 to impose export license requirements on entities that have been targeted for nonproliferation-related reasons by other agencies of the U.S. government, and by foreign governments, in cases where other sections in Part 744 do not already allow inclusion of such entities on the Entity List. This approach would become another tool allowing BIS to work with its counterparts within and outside the U.S. government to ensure that entities of proliferation concern worldwide are denied access to controlled goods and technologies.

In publishing the proposal, BIS seeks to aid the exporting public by simplifying the EAR and providing more information about entities of concern. But in pursuit of stronger, more effective and efficient export controls, BIS should go beyond this proposal, and implement additional measures, most under authorities already in effect.

BIS should institutionalize the practice of supplying as much information as possible in entries on the Entity List – including all known aliases and contact information. This would provide the public with effective notice regarding entities of concern, and make it more difficult for such entities to evade export controls. Existing entries should be systematically reviewed, revised and enriched to be maximally useful to exporters. Some of these existing entries are now outdated, as the entities in question have changed their names and/or affiliations. And since many entries on the List have only a name to identify the entity, the public no longer has notice of the risky end-user once its name is changed.

BIS has stated that it cannot supply the Chinese names of entities on the List, because the Federal Register cannot accommodate their publication. To bypass this technical limitation, BIS should publish on its website, as guidance for exporters, an augmented version of the List including also the names of listed entities in their original alphabets. This vital information would allow industry to investigate properly potential customers for controlled goods.

BIS should also provide clear guidance to exporters on how to deal with entities related to those on the List. Some language regarding subordinates was included in the "Frequently Asked Questions Regarding the Entity List" on the BIS website, but the relevant section was recently removed. Many entities on the List have numerous subsidiaries and other related companies that constitute a diversion risk. BIS should explicitly state the extent to which license restrictions on listed entities extend to their relatives. All related entities so affected should be listed, as well.

In the interest of informing exporters more fully about diversion risk, BIS should include additional information about why entities are added to the list, and do so more clearly. BIS now describes, in Federal Register notices and accompanying press releases, the risk posed by each entity when it is added to the List. But the List itself only indirectly suggests the nature of the risk presented by each entity, by pointing to a section in Part 744 for license review policy. This indirect explanation would be further diluted in the case of the proposed Section 744.11, which contains a very broad basis for designation. The Japanese Ministry of Economy, Trade and Industry provides a useful model in this regard, by indicating WMD programs of concern directly on its warning list, for each entity. Such one-stop public education would allow industry to make efficient and informed decisions about prospective end-users, commodities and transactions.

BIS should also consider more systematic use of Section 744.20, which allows imposition of license requirements on entities sanctioned by the State Department. These sanctions are applied under various legal authorities against foreign individuals, private entities, and governments that engage in proliferation activities. All of these inherently risky end-users should be added to the Entity List after they are sanctioned, and should remain on the List even if the statutory term of the sanction has expired, unless the End-User Review Committee (ERC) determines that the entity is no longer a risk.

The Proposed Rule would establish a process by which a listed entity could request that it be removed from the List or that its listing be modified. It is not clear why BIS is seeking to formalize the procedure. But this change underscores the need for the ERC to conduct systematic reviews of entries on the List, to ensure that the entries are current and complete. These reviews should always be undertaken in conjunction with the intelligence community. Therefore, the proposed Section 744.16 should be changed to reflect the inclusion of the intelligence community in the review process. Also, private companies are often the recipients of information (such as suspicious purchase requests) suggesting that a particular entity is a risky end-user. BIS should afford the public an opportunity to supply such information to the ERC, which would aid the Committee's deliberations. It would therefore be prudent for BIS to allow a public comment period before the removal or modification of an Entity List entry at the request of the entity itself.

BIS has recently announced that it is planning a draft proposal that would introduce a standard format for all U.S. Government screening lists, with the objective of having a "more complete continuum of information ... available for exporters to use in screening potential customers." Indeed, such a standard format could be a great help for industry. It could also benefit national security, by allowing smaller businesses to screen their transactions more efficiently and effectively. But this standard format would need to present complete information in a clear fashion. We look forward to working with BIS and other interagency partners on that forthcoming proposal, and hope that the suggestions herein will be helpful then, as well.

We are grateful for the opportunity to present our views.

Respectfully submitted,

Arthur Shulman
General Counsel
Wisconsin Project on Nuclear Arms Control