

Bureau of Industry and Security
Information to Accompany House Foreign Affairs Committee
document titled,
“BIS Licensing Data Report Breakdown for PRC Companies on the Entity
List”
March 2023

The Department of Commerce, Bureau of Industry and Security (BIS) honors requests for information protected from disclosure by section 1761(h) of the Export Control Reform Act (ECRA) when submitted by the chair or ranking member of a committee or subcommittee of appropriate jurisdiction in accordance with the statute. In response to a request from Chairman McCaul, BIS provided information responsive to his request on license applications for exports that involve Entity Listed parties based in the People’s Republic of China (PRC). These documents covered licenses adjudicated during the period from January 1, 2022-March 31, 2022, and were concurrently shared with the Ranking Member’s staff.

The United States maintains export controls on the export, reexport, and transfer (in-country) of items to the PRC to protect national security, including to prevent PRC companies and other entities from obtaining U.S. items that can be diverted to advancing the PRC government’s military-civil fusion strategy to advance the PRC’s military modernization and other malign activities.

Placing foreign companies on the Entity List allows the U.S. government to control their access to U.S. technology, including commercial products. The Entity List is not a blacklist – it is a regulatory tool to assess export transactions involving various parties that have been added to the Entity List for various reasons. The policy for reviewing license applications for each party is public and determined by the Departments of Commerce, Defense, State, and Energy based on national security and foreign policy considerations.

All of the license applications provided to Chairman McCaul were evaluated by those agencies and approved, denied, or returned without action (RWA’d) through the standard interagency review process pursuant to the relevant policy. For some well-known entities included in information previously provided and cited by Chairman McCaul, export license applications are reviewed under policies set by prior Administrations, and these policies are not simply presumptions of denial.

In addition, the approval of export licenses for transactions involving entities on the Entity List is not, by itself, sufficient to draw accurate conclusions about the effectiveness of BIS’s licensing policy for several reasons, including:

- Prospective exporters have clear guidance on what transactions are likely to be approved or denied because BIS clearly outlines the licensing policies to the public when placing entities on the Entity List. Thus, exporters generally submit applications with a higher likelihood of approval, which is reflected in the data released by the Committee.

- Every license reflected in this data—which primarily involve exports of low-technology “EAR99” and other items that do not pose significant national security concerns for the end use by the Entity Listed party —was carefully reviewed pursuant to the relevant policy and approved after an interagency process that included the Departments of Defense, State, Energy, and Commerce.
- Approved licenses can include those in which Entity List parties will not receive some or all of the items in the proposed transaction. This is because the license requirement applies even if the listed party is only an intermediary in the transaction. In other words, requiring exporters to include any Entity Listed parties that have a role in a transaction gives BIS and our interagency partners insight into such transactions, however, that does not mean that Entity Listed parties are always the end customers or users of authorized items.
- The value of approved licenses does not correspond to exports over the period of the data. BIS licenses are generally valid for four years and exporters are required to submit good faith estimates of the quantity and value of the items that they seek to export over that time period by Export Control Classification Number (ECCN). As a general matter, a substantial number of licenses are not fully utilized.
- Aggregate data also does not reflect restrictive conditions that may be imposed on licenses that are approved or the percentages of applications that were “returned without action” and never re-filed.