



## 贸易咨询快讯

### 美国商务部出口管制实体清单新增 44 家中国企业

美国商务部产业与安全局（Bureau of Industry and Security，以下简称“BIS”）修订了《出口管制条例》（Export Administration Regulations，以下简称“EAR”）第 744 章第 4 号补充文件，在出口管制实体清单（Entity List，以下简称“实体清单”）中新增 44 家中国企业。这 44 家实体包括 8 家大型中国国有企业和其下属 36 家附属企业。此次修订于 2018 年 8 月 1 日生效。

“实体清单”是美国出口管制的重要手段之一。若美国政府认定相关企业从事违反美国国家安全或外交政策利益的活动，经由美国商务部、国务院、国防部、能源部和财政部所组成的最终用户审查委员会对最终用途和最终用户进行审议后，可将其列入“实体清单”。对于所有受 EAR 管辖的原产于美国的产品（以下简称“美国产品”）的相关业务，若涉及“实体清单”内企业，均需获得美国商务部产业与安全局的许可。

此次基于最终用户审查委员会的审议决定，美国商务部产业与安全局修订了“实体清单”，新增了 44 家中国企业。该修订将导致，对于所有受 EAR 管辖的美国产品的相关业务，若与新增实体有关时，需获得美国商务部产业与安全局许可。美国商务部产业与安全局依据拒绝批准推定政策（“presumption of denial”，即默认为不予许可，除非获得反证），对涉及“实体清单”内企业的交易许可申请进行审核。

向新列入“实体清单”的企业进行出口、再出口、转移 EAR 出口管制商品时，无论新增实体企业是作为买方、中间收货人、最终收货人或者最终用户，均须取得许可。此外，对列入“实体清单”有关的交易，不适用 EAR 许可例外。

德勤评论

美国的出口法律和实施条例对敏感物品、软件和技术 的广义“出口”施加管制，从而对美国国内外实体产生影响。如果涉及管控商品再转让或再出口，改变原先最初美国出口商申报管制商品的预计最终用途或最终用户，则应按改变后的最终用途和最终用户重新申请许可。

对于新增 BIS “实体清单”企业的供应商而言，在新的监管要求下，原受 EAR 管辖但无需出口许可的美国产品（包括 EAR99 的产品），现在则需要得到美国商务部产业与安全局的许可。因此，与列入 BIS “实体清单”内企业有业务往来的美国企业及国外企业，需评估其当前的供应链及出口管制合规安排。

对于广大“走出去”中国企业而言，在日益复杂的国际贸易形势下，其海外运营将不可避免 的面临更多元和严格的合规要求。中国企业需了解、熟悉外国当地合规要求，结合自身业务情况定制合规制度，对相关人员进行培训，合理考虑运用贸易自动化工具进行管控，进而形成高效运作的合规体系，并定期进行合规自查。

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- 获取并分析出口数据，以评估现行的监管要求带来的潜在影响；
- 进行合规检查，以识别企业潜在的合规风险；
- 为 BIS 许可申请流程提供指导与协助；
- 复核出口管制编码归类的准确性；
- 建立、健全及复核出口管制内控体系；
- 出口管制及贸易合规培训；
- 全球贸易自动化系统实施。

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## Trade Advisory Newsflash

### U.S. adds 44 China-based entities to the Department of Commerce Entity List

The Department of Commerce Bureau of Industry and Security (BIS) has [amended](#) 15 C.F.R. Part 744, Supplement No. 4, of the Export Administration Regulations (EAR), adding 44 China-based entities to the Entity List. The list of 44 consists of 8 large state-owned enterprises and 36 of their subsidiaries. This rule change became effective on 1 August 2018.

The Entity List is an important piece of the U.S. export control regime. It identifies entities the U.S. has determined to be involved in activities contrary to its national security or foreign policy interests. Entities are placed on the Entity List pursuant to a policy review of end-use and end-users undertaken by the End-User Review Committee, which consist of the Departments of Commerce, State, Defense, Energy and Treasury. U.S.-origin items subject to the EAR involving any of the entities within the "Entity List" will be subject to a licensing requirement.

At the recommendation of the End-User Review Committee, the BIS has revised the Entity List and added the aforementioned 44 China-based entities. This rule change will impose a licensing requirement on U.S.-origin items subject to the EAR involving any of the newly added entities. BIS will review new license requests with respect to these entities under a policy of presumption of denial.

These new licensing requirements apply to all transactions that involve the export, reexport, or in-country transfer of any item subject to the EAR to the 44 newly identified entities. These requirements also extend to transactions where any of these entities act as purchasers, intermediate consignees, ultimate consignees, or end-users. Further, none of the EAR license

exceptions will be available for transactions involving these entities.

## Comments

U.S. export laws and implementing regulations place restrictions on broadly defined “exports” of sensitive items, software, and technology and affect American and foreign entities alike. These restrictions include retransfers, or reexports beyond the intended end-use and end-user.

As for the suppliers of the newly identified entities, all U.S.-based and foreign companies doing business with any of the 44 named entities should re-examine their current supply chain and export controls compliance arrangements. U.S.-origin items subject to the EAR that did not require an export license, including EAR99 items, will now require a BIS license under the new licensing requirements.

For the vast number of Chinese enterprises with outbound investment, in the increasingly complex international trade environment, it is inevitable that they have to manage the more diversified and strict compliance requirements outside of China. Chinese enterprises are advised to understand and familiarize themselves with local trade compliance requirements, establish export control compliance mechanism according to their specific business conditions, constantly train relevant personnel, consider the use of trade automation tools, and regularly conduct compliance review in order to form an efficient and operational compliance system.

Deloitte’s Global Trade Advisory specialists are part of a global network of professionals who can provide specialized assistance to companies in global trade matters. Our professionals can help companies seeking to manage the impacts and potential impacts of the developments described above by:

- Obtaining and analyzing export data to assess the potential impacts of these recent regulatory measures;
- Conducting compliance reviews to identify potential compliance risks;
- Providing guidance through the BIS licensing process;
- Scrutinizing the accuracy of export classifications;
- Establish, review and improve export control compliance procedures;
- Export Control and Trade compliance training; and
- Global trade automation implementation.

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