

ALERT

Commerce Expands EAR End-User Controls with New “50 Percent Rule”

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On September 30, 2025, the U.S. Department of Commerce’s Bureau of Industry and Security (BIS) published an interim final rule (IFR) that significantly expands the number of foreign entities subject to license requirements and other restrictions based on Entity List and “Military End-User” (MEU) List designations as well as certain sanctions designations. The IFR amends the Export Administration Regulations (EAR) such that any foreign entity that is at least 50% owned by one or more entities on the Entity List or MEU List is itself automatically subject to Entity List or MEU List restrictions, respectively. BIS also concurrently released a revised set of “Entity List FAQs” providing additional guidance.

The IFR became effective on September 29, 2025, when it was released for public inspection, and public comments on the IFR are due to BIS by October 29, 2025. BIS’s new Affiliates rule is designed to be consistent with the U.S. Department of the Treasury, Office of Foreign Assets Control’s (OFAC) “50 Percent Rule,” pursuant to which any entity that is owned 50% or more, directly or indirectly, individually or in the aggregate, by one or more designated persons is generally subject to the same restrictions as the designated person (s). As BIS warns in the IFR, “the application of the Affiliates rule creates an affirmative duty to determine the ownership of other parties to the transaction in order to comply.”

Key details of the Affiliates rule IFR, including a new temporary general license, are highlighted below.

The Affiliates Rule

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The EAR impose license requirements on and limit the availability of most license exceptions for exports, reexports, and transfers (in-country) when an entity designated on the Entity List is a party to the transaction. In most cases, an Entity List designation results in an effective U.S. export ban when the policy for the license review is “presumption of denial.” Prior to the issuance of the IFR and the Affiliates rule, BIS took the position that separate legal subsidiaries or affiliates of a listed entity were not *per se* subject to the Entity List restrictions. That is no longer the case.

To address potential diversion risks through affiliates, the IFR amends the EAR such that the Entity List license requirements, license exception eligibility, and license review policy applicable to listed entities now also apply to any foreign entity that is 50% or more owned, directly or indirectly, by one or more listed entities. Further, the IFR amends the EAR to adopt the Affiliates rule for the MEU List; certain low-level U.S. items require a license when an entity subject to MEU List restrictions is a party to the transaction. BIS also imposes export control restrictions on certain Specially Designated Nationals (SDNs) and is applying the Affiliates rule in that context as well to align with OFAC’s controls.

The Affiliates rule will not apply in the following contexts: (1) parties on BIS’s Unverified List (UVL); (2) parties subject to BIS Denial Orders; (3) affiliates of entities operating at an address on the Entity List if the entities operating at that address are not specifically identified on the Entity List; (4) affiliates of unlisted “military end users” unless the affiliate itself meets the definition of “military end user” in the EAR; and (5) U.S. entities owned by listed entities.

Temporary General License

The IFR includes a Temporary General License (TGL), “General Order No. 7, TGL—Non-Listed Foreign Affiliates of Listed Entities,” under a new paragraph (g) in Supplement No. 1 to Part 736. The TGL, which is valid for 60 days and expires on November 28, 2025, provides the following authorizations:

1. Exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 when a non-listed foreign entity that is directly or indirectly owned 50% or more, individually or in aggregate, by one or more listed entities on the Entity List or MEU List is a party to the transaction; and
2. Exports, reexports, or transfers (in-country) to or within any country other than Country Group E:1 or E:2 when a party to the transaction is a 50% owned non-listed foreign affiliate of an Entity or MEU listed entity, and such party to the transaction is a joint venture with a non-listed entity headquartered in the United States or Country Group A:5 or A:6 that itself is not owned 50% or more by a designated party.

Other Key Takeaways

- **Affirmative Duty to Conduct Ownership Diligence.** Notably, the IFR adds a new “red flag” to the EAR, which explains that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is owned by one or more listed entities on the Entity List or the MEU List, it must resolve the “red flag” prior to proceeding by, for example, submitting a license application to BIS or

identifying an available license exception based on the restrictions applicable to the listed party. In this context, BIS also alerts exporters that “[t]he application of the Affiliates rule creates an *affirmative duty* to determine the ownership of other parties to the transaction in order to comply.” While many companies already conduct ownership diligence to comply with OFAC’s 50 Percent Rule, the Affiliates rule nonetheless adds significant new ownership-related obligations for exporters that will need to be integrated into existing trade compliance processes, including additional diligence where a listed entity has significant minority ownership, as noted below.

- **Rule of Most Restrictiveness.** The IFR specifies that the “rule of most restrictiveness” applies to entities captured by the Affiliates rule. This means that an entity owned 50% or more by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List, “is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR.” For example, although a license exception may be available for non-listed affiliates of a listed entity, where an unlisted entity is owned 50% or more by multiple Entity List parties, and only one such owner is eligible for a license exception, that license exception will not apply to transactions involving the unlisted entity, because BIS will apply the most restrictive license requirements to the unlisted entity.
- **Conforming Changes to Foreign Direct Product (FDP) Rules.** The EAR’s restrictions extend to certain foreign-manufactured direct products of U.S. technology or software. The IFR specifically applies the broadened Affiliate rule designation to the Entity List FDP rules in section 734.9(e) and the Russia/Belarus-Military End User and Procurement FDP rule in section 734.9(g) of the EAR. An application example in the IFR indicates that if a company is owned by multiple listed entities that are subject to different FDP criteria (e.g., under sections 734.9(e)(1) and (g)), then both criteria would be used for determining which items required a license based on the Entity List license requirements.
- **Significant Minority Ownership Red Flag.** The IFR includes notice from BIS “that foreign parties with significant minority ownership by, or other significant ties to (e.g., overlapping board membership or other indicia of control), an Entity List entity, an MEU List entity, or an SDN subject to § 744.8(a)(1) present a Red Flag of potential diversion risk to the listed entity.” The IFR states that “additional due diligence is necessary” in this type of situation “to ensure that items exported to the entity are not destined for the Entity List party, MEU List party, or SDN and [exporters] are reminded that the EAR imposes licensing requirements, such as end-user and end-use based restrictions in part 744 of the EAR, that could apply to such companies even if they are legally separate from the listed entity.”
- **Guidelines for Applying Affiliates Rule.** The IFR adds “Supplement No. 8 to Part 744—Guidelines for Applying 50 Percent Ownership Rule to Entity List Entries and Other End-User Controls,” which provides guidance similar to that in OFAC’s 50 Percent Rule guidance document from August 13, 2014. This supplement includes guidelines regarding the “Application of the Affiliates rule” and “Due diligence for foreign entities of listed entities with less than 50 percent ownership by listed entities or SDNs or for parent entities of listed entities.”
- **Compliance Aid Table.** Table 1 to the IFR includes a compliance aid that summarizes the scope of the new rule. This table includes Affiliates rule application notes for certain relevant types of entities

including, for example foreign affiliates owned by listed entities where percentage of ownership cannot be determined (i.e., unresolvable Red Flag entities), and instances where there is no “knowledge” that the foreign entity is owned by a listed entity.

The new Affiliates rule complicates exporters’ due diligence and compliance requirements, especially when information about affiliation is limited or incomplete, as it often is in most foreign jurisdictions. It is therefore crucial that BIS receive industry feedback on the scope and effectiveness of the IFR as well as exporters’ compliance responsibilities.

Our National Security, International Trade, and Strategic Competition/Supply Chain teams have unparalleled experience and expertise representing a broad range of U.S. and multinational clients in complex export control, sanctions, international trade, and supply chain matters. For more information on this new rule and any other national security, trade, or supply chain issues, please contact any of the attorneys listed on this alert.