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Export Controls Alert

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BIS issues “Affiliates Rule,” aka the BIS 50%-Rule

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The day has come—BIS issues its own aggregate 50% rule. Learn what this means for US export controls and your compliance strategy.



What’s the impact?

- BIS’s new “Affiliates Rule” extends the designations to unlisted foreign entities that are 50% or more, directly or indirectly, owned by Entity List, MEU List, and/or certain SDN-designated juridical or natural persons.
- Though based on OFAC’s Aggregate 50% Rule, BIS’s Affiliates Rule is significantly broader because it aggregates across the applicable lists and applies the most restrictive standard.
- Companies with customers or end users “in the chain,” with a footnote in an Entity List designation, must know that even if, e.g., a Footnote 1 designated entity owns <50%, but collectively the unlisted customer/end user is owned 50% or more by one or more Entity List designated entities, the Footnote 1 Entity List destination scope applies (the same is true for other applicable footnotes).
- Exporters must now conduct thorough ownership analysis and aggregate stakes from multiple listed parties to determine if the 50%

threshold is met.

- Failure to identify covered affiliates can result in strict liability penalties, making robust due diligence and documentation essential for compliance.

On September 29, 2025, the Bureau of Industry and Security (BIS) issued the Interim Final Rule (IFR) "[*Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities*](#)," significantly amending the Export Administration Regulations (EAR) to impose the long-anticipated "50%-Rule" for end-user controls under the EAR. This new IFR, the termed "Affiliates Rule," extends export restrictions to foreign entities that are at least 50% owned, directly or indirectly, by parties listed on the Entity List, Military End-User (MEU) List, or the Department of the Treasury's Office of Foreign Assets Control's (OFAC) Specially Designed Nationals and Blocked Persons List (SDN List) (in the following "Designated Party" or collectively "Designated Parties"). Notably, BIS did not extend the Affiliates Rule to parties on its Unverified and Denied Persons Lists but has requested public input on whether it should do so in the future. The Affiliates Rule aims to close alleged loopholes enabling restricted entities to circumvent controls specific to them by channeling items through affiliates and subsidiaries.

The new IFR became effective September 29, 2025, although BIS has issued a Temporary General License authorizing certain transactions through November 28, 2025. Even though the IFR is already in effect, the public may submit comments to BIS through Wednesday, October 29, 2025.

This alert outlines the IFR's background, key changes to the EAR, and practical compliance steps for industry professionals.

Previous regulatory landscape

Prior to the Affiliates Rule, the EAR imposed additional export restrictions only on entities specifically named on the Entity List, MEU List, or the SDN List. Unlike OFAC's long-standing practice to consider entities owned 50% or more, directly or indirectly, individually or in aggregate, by one or more blocked persons as generally blocked, regardless of whether such entities are specifically added to the SDN List (OFAC's "50%-Rule"), legally distinct subsidiaries or affiliates of listed entities were not subject to EAR restrictions applicable to their parent entities unless they were individually designated on one of the above BIS lists (BIS's so-called "legally distinct standard"). This approach allegedly created opportunities for listed entities to evade controls by conducting business through unlisted affiliates or newly created companies, which BIS and commenters have described as a "whack-a-mole" problem.

Key changes

The Affiliates Rule's key aspects include:

- / **The 50%-Rule:** Any foreign entity that is 50% or more owned, directly or indirectly, individually or in aggregate, by one or more parties on the Entity List, MEU List, or certain sanctioned parties on the SDN List (hereinafter the "Affiliates Rule") is now automatically subject to the same export restrictions as its designated owners, even if the entity itself is not specifically named on one of these lists. Importantly, the Affiliates Rule only hinges on ownership, not control. This is in line with OFAC's 50%-Rule, and different from, for example, the EU's approach, which explicitly includes ownership and control for purposes of its 50%-Rule.

The rule applies globally, regardless of the country in which the affiliate is located. However, for owners designated on the SDN List, the Affiliates Rule applies only to owners with an SDN program identifier enumerated in EAR § 744.8(a)(1). BIS has asked for public comments on whether it should extend the rule to its Unverified and Denied Persons Lists.

- / **Aggregate ownership also across sanctions lists:** The 50% threshold of the Affiliates Rule applies to aggregate ownership by multiple Designated Parties (e.g., two listed entities each owning 25%). Importantly, the designated owners do not have to be designated or sanctioned on the same list. Therefore, the Affiliates Rule also applies if, e.g., one owner is on the MEU List and another owner is on the Entity List if their aggregate ownership interest is 50% or more. This is a notable difference from the OFAC 50%-Rule, as OFAC does not aggregate ownership interests held by parties designated on different sanctions lists. This means that, for example, if an entity is owned 20% by an entity designated on the SDN-List and 30% by an entity on the Sectoral Sanctions Identifications (SSI) List, the OFAC 50%-Rule would not apply as OFAC would not aggregate these ownership percentages for purposes of Section 228 of the Countering America's Adversaries Through Sanctions Act (CAATSA).
- / **Most restrictive standard in case of multiple owners:** If the Affiliates Rule applies, the foreign affiliate 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. This is especially important if, e.g., one of the owners is designated with a footnote on the Entity List, as the additional restrictions attached to the footnote will also apply to the non-listed affiliate, irrespective of the ownership percentage of the owner with the footnote designation.

For license exceptions, this standard means that under the Affiliates Rule, if a foreign affiliate is owned 50% or more by multiple designated Parties, and only one Designated Party is eligible for a license exception, that license exception will not apply to transactions involving the foreign affiliate because BIS will apply the most restrictive license requirements to the foreign affiliate. BIS reserved the right to apply exceptions to the Affiliates Rule on a case-by-case basis if it determines that the foreign affiliate owned by a particular designated entity does not pose a

significant risk of being or becoming involved in diversion to the designated entity. BIS anticipates that these exclusions will be identified by specifying in the relevant entry on the Entity List or MEU List that the Affiliates Rule does not apply to any foreign affiliate owned by a particular designated entity or that a specific foreign affiliate is excluded.

- / **Not applicable to addresses on the Entity List:** The Entity List license requirements and other Entity List restrictions applicable to a Designated Party now also apply to any foreign entity subject to the Affiliates Rule. This, however, does not apply to foreign affiliates of designated entities operating at an address listed on the Entity List if the entities operating at that address are not specifically identified on the Entity List (i.e., so-called “stand-alone” addresses), see new EAR § 744.11(a)(1). BIS notes that these addresses pose diversion concerns, such as through the operation of corporate secretarial services companies or logistics companies associated with high volumes of diversion, but that entities located at a different address with a parent company registered at a corporate services address on the Entity List may not present the same diversion risks.
- / **MEU Rule, EAR § 744.21 – Unlisted MEUs are excluded:** The MEU List and Entity List license requirements in EAR § 744.21(a)(1) and (2) apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50% or more by one or more listed entities or entities subject to the MEU List restrictions based upon their ownership. However, these license requirements do not apply to unlisted foreign affiliates owned, directly or indirectly, individually or in the aggregate, solely by one or more unlisted “military end users” unless the unlisted foreign affiliate itself meets the definition of a “military end user.”
- / **Significant changes to Foreign Direct Product Rules (FDPR), EAR § 734.9:** BIS also introduced significant changes to the FDPR in EAR § 734.9, specifically paragraphs (e) and (g).

The end-user scope of the Entity List FDPR now includes any foreign entity subject to the Affiliates Rule if at least one of the owners is an entity within the end-user scope of EAR § 734.9(e). The rule specifies that these requirements apply to all entities on the Entity List with a footnote referenced under EAR § 734.9(e) (Entity List FDP rule). This means that as soon as the foreign affiliate has at least one owner that fulfills the end-user scope of EAR § 734.9(e), these Entity List FDP requirements apply to the foreign affiliate. The same is true for the end-user scope of the Russia/Belarus-Military End User and Procurement FDPR (EAR § 734.9(g)).

In practice, this means that companies will have to conduct detailed FDPR analyses for any transaction that involves a Designated Party designated with a footnote 1, 4, 5, or 3 on the Entity List, even if the Designated Party is only a minority shareholder. Section II.A.3 of the IFR offers an application example. Essentially, unlisted foreign affiliate G, which is owned 35% by Company E (footnote 3 designation) and 15% by Company F (footnote 1 designation), is caught by the Affiliates Rule. Company E and F must complete both the footnote 1 and footnote 3 product scope analyses to determine the controls that apply to unlisted foreign affiliate G.

Moreover, the same would be true even if a footnote 1 entity owned only a small percentage of the foreign affiliate, e.g., 0.01%, and another designated entity or entities with or without another footnote own or owns 49.99%.

- / **Due diligence requirement and strict liability:** Exporters, reexporters, and transferors must determine the ownership structure of all foreign parties to a transaction for which there is “knowledge” (as defined in EAR § 772.1) that such foreign parties have one or more owners listed on the Entity List, the MEU List, or the SDN List or are unlisted entities subject to license requirements or other restrictions based upon their ownership. Pursuant to EAR § 772.1, knowledge means knowledge of a circumstance (including “reason to know” or “reason to believe”), which includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Therefore, the due diligence requirements would already be triggered if, for example, a small portion of the name of an entity indicates an affiliation with a Designated Party.

Unresolved ownership questions are red flags. BIS requires companies to resolve the red flag through heightened due diligence, apply for a license, or identify an applicable license exception before proceeding with a reexport or transfer. BIS also notes that foreign parties with significant minority ownership by or other significant ties to (e.g., overlapping board membership or other indicia of control) a Designated Party present a red flag of potential diversion risk to the Designated Party, which equally triggers additional due diligence requirements. Compliance is enforceable on a strict liability basis—failure to identify a 50%-owned affiliate can result in penalties, regardless of intent.

- / **New Red Flag No. 29 – Affirmative duty to determine ownership:** Importantly, if ownership information cannot be determined, exporters must resolve the issue, apply for a license, or identify an applicable license exception before proceeding. BIS issued a new Red Flag 29 in Supplement No. 3 to Part 732, introducing an affirmative duty to determine the percentage of ownership by those entities and, if that is not possible, to obtain a license if required under the Entity List or MEU List based on the requirements for the owner or owners of that foreign entity, unless a license exception is available.
- / **Temporary General License (TGL):** BIS issued General Order No. 7 in supplement no. 1 to Part 736, which is a TGL available for certain transactions involving non-designated foreign affiliates of designated entities, but this is limited in scope and duration (expiring 60 days after publication, i.e., Friday, November 28, 2025).

Specifically, the TGL authorizes:

- / Exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 (supplement no. 1 to part 740) when a non-listed foreign entity subject to the Affiliates

Rule is a party to the transaction; and

- / 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 non-designated foreign affiliate subject to the Affiliates Rule; 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 is not owned by one or more Designated Party or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership.

Importantly, this TGL can only overcome the license requirements described in EAR § 744.11 and EAR § 744.21 applicable to the non-listed foreign affiliate to which this TGL applies.

- / **Requests for removal, EAR §§ 744.16(e), 744.21(b)(2):** BIS has also modified the introductory text to EAR §§ 744.16(e) and 744.21(b)(2) to permit unlisted entities affected by the Affiliates Rule to request that BIS modify their parents' MEU List or Entity List entries to specifically exclude the requester.
- / **License applications:** BIS amended Supplement No. 2 to Part 748 (Unique Application and Submission Requirement) by adding new paragraph (cc), which specifies that in order to request a license for an export, reexport, or transfer (in-country) to any foreign entity subject to the Affiliates Rule or when the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more Designated Party, the license applicant must specify "Affiliates rule" in Block 9 (Special Purpose) of the BIS-748P "Multipurpose Application" form. Additionally, when one cannot determine the ownership percentage of a foreign entity held by a Designated Party, the license application must specify the names of the Designated Party or Parties that own that entity and include an explanation of the due diligence conducted to determine the percentage of ownership and why the percentage of ownership could not be determined.

Compliance recommendations

Companies should carefully review not only their client base, but also their freight forwarders, distributors, financial institutions, and any other party involved in transactions that fall within the scope of the EAR to determine whether they are subject to the Affiliates Rule. To comply with the new restrictions, (re)exporters and transferors should:

- / **Update screening procedures and ownership analysis:** Expand due diligence to include an ownership analysis of all parties to a transaction subject to the EAR. BIS recommends using commercial screening tools capable of identifying 50% aggregate ownership by Designated Parties. Importantly, the Consolidated Screening List will no longer be exhaustive; companies

must conduct their own 50% ownership analysis.

Direct and indirect ownership interests by Designated Parties must be aggregated to determine whether the 50% threshold is met. Note that the 50% threshold can be met by combining ownership stakes from multiple designated parties, even if they are listed on different export control and/or sanctions lists (i.e., Entity List, MEU List, and/or SDN List). If multiple listed parties are involved, apply the most restrictive license requirements, even if they only apply to a minority shareholder. If ownership cannot be determined, do not proceed without a BIS license or a valid license exception.

- / **Implement a risk-based approach:** Prioritize enhanced due diligence for transactions involving jurisdictions or sectors with opaque ownership structures. Treat the inability to determine ownership as a “red flag,” requiring resolution or a license application.
- / **Document compliance efforts:** Maintain records of ownership investigations and due diligence steps. Clearly document the basis for any determination that an entity is not subject to the 50%-rule.
- / **Leverage the TGL:** Assess eligibility for the TGL for certain transactions, but plan for its expiration within 60 days.

BIS Affiliates Rule compliance

The BIS Affiliates Rule has been long anticipated, not least because of its significant impact on the due diligence efforts now incumbent upon the private sector. While BIS acknowledges the additional burden that this new rule introduces, it assumes that prior experience with the OFAC 50%-Rule and the availability of commercial screening resources will facilitate compliance efforts for companies. Hence, reexporters and transferors should apply robust screening procedures and conduct thorough ownership analyses, which all should be documented in detail; based on the explanatory notes, it appears that BIS will apply a “should have known” approach going forward and will thoroughly vet the due diligence procedures applied to determine whether a company’s analysis was sufficiently diligent. BIS announced that it may follow OFAC’s practice of providing guidance regarding certain entities that may be subject to the Affiliates Rule to facilitate compliance and may, in certain circumstances, add those additional entities to the Entity List.

To ensure compliance, companies should carefully review the new guidelines issued by BIS in Supplement No. 8 to Part 744 of the EAR (Guidelines for Applying Affiliates Rule to Entity List Entries and Other End-User Controls). BIS clarified in its explanatory notes that even though its guidelines are modeled after OFAC’s guidelines, they issued their own because the EAR requirements are not focused on property, but rather on identifying foreign affiliates of designated entities that are of concern to divert items subject to the EAR to designated entities because such foreign affiliates are owned 50% or more by one or more designated entities or by

entities that are subject to restrictions based on their ownership. Reexporters and transferors should keep this context in mind when conducting due diligence and deciding whether or not to transact with an entity with an unclear ownership structure.

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