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BIS adopts 50% rule: What you need to know

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The Bureau of Industry and Security issued an interim final rule, effective immediately, that extends U.S. export control restrictions applicable to the Entity, MEU, and SDN lists to all 50% subsidiaries.

On September 29, 2025, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) released an interim final rule (IFR) that expands export control restrictions and licensing requirements under the Export Administration Regulations (EAR) Entity List and Military End-User (MEU) List to foreign entities 50% or more owned by one or more listed parties, which BIS has labeled the "Affiliates rule."[1] BIS also issued updated Frequently Asked Questions interpreting the Affiliates rule[2]. The new rule is modeled on the Office of Foreign Assets Control's (OFAC) 50% rule for entities owned by one or more sanctioned persons. In practical terms, it significantly raises the bar for compliance with the EAR by imposing on exporters, reexporters, and transferors of U.S.-origin items subject to the EAR "an affirmative responsibility to know the ownership of the foreign companies that are parties to a transaction" and an obligation to treat any ownership interest of a listed party as a red flag that must be fully resolved before proceeding with an unlicensed export, reexport, or transfer. It also underscores the Trump administration's continued focus on tightening enforcement of export control rules affecting strategic international trade.

The Affiliates rule is effectively immediately, though BIS solicited public comments, which the agency will consider when it issues a final rule in the coming months. The comment period ends October 29, 2025. BIS issued a Temporary General License (TGL) that authorizes exports to entities otherwise covered by the rule in certain destination countries[3] for a limited period of time (although BIS provided conflicting information as to the precise end date).[4]

This client update summarizes the key implications and compliance considerations presented by the Affiliates rule.

1. Export controls remain a priority under Trump 2.0.

The Affiliates rule has been anticipated by industry for many months and reflects the U.S. government's increasing focus on export controls as a national security tool. The first Trump administration leveraged a range of restrictions under the EAR to control foreign access to strategic goods, and this trend continued under the Biden administration, which simultaneously sharpened enforcement guidelines and heightened compliance expectations for the private sector. As discussed in our client update, for example, BIS released guidance in October 2024 that laid out prescriptive compliance controls and monitoring expectations for financial institutions.

The Affiliates rule makes clear that export control enforcement remains a priority under the second Trump administration. Under Secretary of Commerce for Industry and Security Jeffrey I. Kessler emphasized this in the press release accompanying the rule, stating that "[u]nder this Administration, BIS is closing the loopholes and ensuring that export controls work as intended."[5] We expect that export control compliance will remain a key policy and enforcement focus for the new Administration.

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2. The Affiliates rule extends Entity and MEU List restrictions to foreign entities 50% or more owned by listed entities.

The Affiliates rule is designed to curb circumvention of export control restrictions and diversionary schemes (e.g., through the creation of foreign companies to evade Entity List restrictions). To that end, it amends the EAR to extend restrictions and licensing requirements under the Entity List and MEU List to non-U.S. entities that are 50% or more owned in the aggregate, directly or indirectly, by listed entities.[6] The Affiliates rule also extends to entities owned by parties covered by § 744.8(a)(1) of the EAR, which captures entities on sanctions-related lists, including OFAC's Specially Designed Nationals and Blocked Persons List (SDN List).[7] The rule replaces BIS's previous "legally distinct" standard, which imposed restrictions only on entities specifically listed, and on related foreign entities in the same country that were not legally distinct (e.g., a branch), but did not capture unlisted foreign affiliates that were legally distinct (e.g., a Malaysian subsidiary of a Chinese company).

The Affiliates rule follows the blueprint of OFAC's 50% rule, which provides that any entity owned 50% or more in the aggregate, directly or indirectly, by one or more restricted persons is itself considered to be a restricted person.[8] Like OFAC's 50% rule, the Affiliates rule aggregates ownership by listed entities. However, unlike the OFAC rule (which does not aggregate ownership of persons subject to blocking and non-blocking sanctions or persons subject to non-blocking sanctions under different authorities), it requires the aggregation of ownership by parties across any of the three lists covered by the Affiliates rule. Thus, if an entity is 30% owned by a company on the Entity List and 20% owned by a company on the MEU List, it would be captured by the Affiliates rule. The rule adopts a "most restrictive" standard – meaning that an entity is subject to the most restrictive license requirements (including license requirements under the Foreign Direct Product Rule that apply to certain listed entities), license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. Also like OFAC's 50% rule, the Affiliates rule applies to both direct and indirect ownership, meaning parties must look through corporate structures to determine an entity's ultimate ownership, and it does aggregate ownership by multiple restricted parties. OFAC has provided further guidance that its 50% rule operates on a "light switch" principle, so that any entity 50% or more owned by one or more blocked persons is itself treated as blocked. Thus, if listed entity A owns 50% of entity B, and B owns 50% of C, C is blocked even though the indirect beneficial ownership of the listed entity is only 25%. BIS has adopted this principle.[9] On the other hand, if listed entity A owns 49% of B, B owns 60% of C, and A owns the remaining 40% of C, OFAC does not consider C to be blocked (even though A's aggregate beneficial ownership is approximately 70%), because B is not caught by the 50% rule and is disregarded.[10] BIS's FAQs do not explicitly repeat this guidance, but the rule release does state that BIS "is adopting for the Entity List the 50 percent rule that OFAC has used for many years for the SDN List" and that experience in complying with OFAC's 50 percent rule should ease the transition for parties in complying with the requirements that this IFR adds to the EAR."[11] Based on this approach, it appears that a similar analysis of indirect ownership is likely. Finally, both the 50% rule and Affiliates rule apply only to ownership, not control (so long as the 50% ownership test is not met), though control may be a red flag for potential violations when ownership information is opaque.[12]

3. Exporters have an affirmative obligation to diligence ownership, and minority ownership by a listed entity must be treated as a red flag.

Although the Affiliates rule builds on the familiar principles of OFAC's 50% rule, it may pose additional challenges to apply in practice, as ownership must be aggregated across multiple different lists, and exporters must apply the "most restrictive" standard of any relevant listed entity (even if that entity holds less than 50%). As BIS reminded the public in the rule, the requirements of the Entity List, the MEU List, and the rules related to sanctioned persons—now including the Affiliates rule—are enforceable on a strict liability basis.

Additionally, while the rule operates at a 50 percent threshold, lower thresholds of ownership also trigger diligence obligations. According to BIS, foreign parties with significant minority ownership by listed entities, or other significant ties (e.g., overlapping board membership) present a red flag that should trigger additional due diligence.[13]

BIS added a new red flag to its "Know Your Customer" and Red Flag Guidance[14] that establishes heightened compliance expectations when the ownership of an entity is unclear. When an exporter, reexporter, or transferor has "knowledge" (including reason to know) that a foreign entity is owned by one or more listed entities, there is an "affirmative duty" to determine the percentage of ownership and if that is not possible, to obtain a license from BIS or

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determine if there is an applicable license exception before proceeding with the transaction.[15] If they do not and the foreign entity was in fact subject to the Affiliates rule, the exporter may face enhanced penalties as a result of deemed knowledge of the violation.[16] Exporters are also advised to "act with caution" when dealing with entities that are minority-owned by listed parties, because of the risk of diversion, prohibited end uses or end users for the exported item, or future designation of the minority-owned recipient.

Even when there is no "knowledge" of potential ownership by a listed entity, BIS states that exporters, reexporters, and transferors now have an "affirmative responsibility" to understand the ownership of foreign entities involved in export transactions as part of their internal compliance procedures. While BIS repeats the mantra that such procedures can be "risk based", this guidance suggests an expectation that exporters, reexporters, and transferors will obtain and analyze ownership information of foreign parties involved in transactions subject to the EAR in all or nearly all cases. The Affiliates rule thus represents a significant increase in compliance expectations for the private sector.

The KYC/Red Flags guidance on the application of the Affiliates rule is directed at exporters, reexporters, and transferors of items subject to the EAR, and it is less clear whether and how these due diligence obligations and expectations will be applied to other parties involved in an export transaction, including financial institutions, who may not have the same access to information concerning foreign parties to an export transaction or their underlying owners. In particular, it is not clear how these new requirements will intersect with the expectation articulated in BIS's 2024 guidance that financial institutions processing payments screen transactions for certain parties included on the Entity List and MEU List and presumptively decline those transactions and whether it changes BIS's position that such financial institutions are not required to affirmatively seek information on parties other than those specifically identified in payment messages for purposes of conducting such screening. In the OFAC 50 percent rule context, financial institutions acting as intermediaries are not expected to diligence the ownership of non-customer parties to funds transfers, absent knowledge or reason to know of a potential issue.[17]

4. The Affiliates rule is immediately effective, though a TGL provides a phase-in period for certain countries and end-users.

While this change has been forecast for months, the immediate effectiveness of these new licensing and due diligence requirements is likely to compound the above compliance challenges, particularly with the ongoing lapse in appropriations putting a halt to most BIS licensing activity and compliance guidance and outreach. This is mitigated to a very limited extent by the TGL BIS issued in conjunction with the Affiliates rule, which delays the effective date of the rule by 60 days for (1) exports, reexports, and transfers destined to unlisted entities that would otherwise be subject to the Affiliates Rule in Country Groups A:5 and A:6, which broadly speaking include NATO members and other countries with which the United States has close defense or security ties and (2) exports, reexports, and transfers destined to unlisted entities in other countries (aside from Cuba, Iran, North Korea, or Syria) that are joint ventures with companies headquartered in the United States or a country in Country Group A:5 or A:6 that are not themselves listed or subject to the Affiliates rule. The TGL does not override other licensing requirements under the EAR.

The Rule includes conflicting information on the validity period of the TGL, indicating in the text that it is valid until November 28, 2025 but using December 1, 2025, in the actual rule provisions added to the Code of Federal Regulations. Presumably the second date will control, but BIS may clarify its position.

While the Trump Administration has attempted to scale back compliance burdens under other regulatory regimes, the Affiliates rule makes clear that export controls are not on the Administration's deregulatory agenda. Stakeholders are advised to evaluate their current compliance and screening procedures to ensure they align with BIS's new standards.

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1 BIS, Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities, 90 Fed. Reg. 47201 (September 30, 2025), https://www.federalregister.gov/documents/2025/09/30/2025-19001/expansion-of-end-user-controls-to-cover-affiliates-of-certain-listed-entities. BIS's Entity List and MEU List impose strict export license requirements on listed parties and limits the availability of license exceptions. The Entity List identifies (among other things) persons or addresses of persons reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The MEU List identifies foreign parties as military end users that are subject to a license requirement for the export, reexport, or transfer (in-country) of certain items.

2 BIS, Entity List FAQs (Sep. 29, 2025), available at https://www.bis.gov/media/documents/entity-list-faqs.pdf ("BIS FAQs"), FAQ 41-53.

3 The TGL applies to entities in Country Groups A:5 and A:6 and to certain joint ventures in other countries involving entities headquartered in those countries or the United States. *See* Supplement No. 1 to Part 740 – Country Groups.

4 As noted below, the Rule provides conflicting information on the validity period of the TGL, indicating variously that it is valid until November 28, 2025 or December 1, 2025.

5 *See* BIS, Press Release, Department of Commerce Expands Entity List to Cover Affiliates of Listed Entities (September 29, 2025), https://www.bis.gov/press-release/department-commerce-expands-entity-list-cover-affiliates-listed-entities.

6 BIS did not extend the Affiliates rule to entities on the Unverified List or parties subject to Denial Orders.

7 15 CFR 744.8(a)(1).

8 *See, e.g.,* 31 C.F.R. § 587.406.

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[9] BIS FAQ 52.

[10] OFAC Responses to Frequently Asked Questions ("FAQ"), FAQ 401, available at https://ofac.treasury.gov/faqs/401.

[11] IFR, 90 Fed. Reg. at 47203, 47202,

[12] BIS FAQ 43.

[13] BIS FAQ 43.

[14] Supplement No. 3 to Part 732 of the EAR.

[15] The rule includes detailed instructions for information to include in license applications submitted in these circumstances.

[16] BIS FAQ 41.

[17] OFAC, FAQ 116, *available at* https://ofac.treasury.gov/faqs/116.

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