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New Commerce Rule Applies Entity List and Other Restrictions to 50% or Greater Owned Foreign Affiliates

On September 30, 2025, the Department of Commerce's Bureau of Industry and Security ("BIS") published [an interim final rule](#) ("IFR") adopting a 50% ownership "Affiliates rule" under the Export Administration Regulations ("EAR").¹ The IFR extends Entity List, Military End-User ("MEU") List, and certain Specially Designated National ("SDN")-related restrictions² to any foreign entity owned, directly or indirectly, individually or in the aggregate, 50% or more by one or more listed parties. BIS also simultaneously adopted a "most-restrictive owner" standard, added a new Red Flag, created a short-term Temporary General License (the "TGL"), and made conforming changes to Foreign Direct Product ("FDP") rules and EAR licensing procedures. BIS also updated its [Entity List FAQs](#). Notwithstanding its publication on September 30, the IFR took effect on September 29, 2025. Comments are due by October 29, 2025, and the TGL expires on November 28, 2025.

Maintained by the End User Review Committee, which is chaired by BIS, the Entity List is a roster of foreign persons, organizations, and entities that face heightened export controls, requiring U.S. exporters to obtain licenses (often with a presumption of denial) before sending specified goods, software, or technology to such listed entities due to national security or foreign policy concerns.³ The Entity List appears in the EAR as Supplement No. 4 to Part 744. The new rule significantly broadens the scope of export controls imposed through the Entity List that have been key drivers of BIS and U.S. Department of Justice enforcement activity, and which have recently resulted in significant civil and criminal corporate penalties.⁴

As highlighted in a January 2024 "U.S. Export Controls and China Strategic Competition" Congressional report, policymakers and experts have long identified the adoption of an OFAC-style 50% rule as an effective way to close what have been perceived as circumvention loopholes in the Entity List regime.⁵ Alongside publication of the IFR, Under Secretary of Commerce for Industry and Security Jeffrey I. Kessler said, "For too long, loopholes have enabled exports that undermine American national security and foreign policy interests. Under this Administration, BIS is closing the loopholes and ensuring that export controls work as intended."⁶ The House Select Committee on China [applauded](#) the action taken by BIS, and Brian Mast, Chairman of the House Foreign Affairs Committee, indicated that the House is prepared to codify the Affiliates rule in legislation.

¹ U.S. Dep't of Commerce, Bureau of Industry and Security, *Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities*, 90 Fed. Reg. 47201 (Sept. 30, 2025).

² The Specially Designated Nationals and Blocked Persons (the "SDN List") is maintained by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC").

³ See 15 CFR Part 744, Supp. No. 4.

⁴ For example, [Cadence Design Systems, Inc.](#) and [Seagate Technology LLC](#) have been the subject of Entity List-driven enforcement actions.

⁵ U.S. House of Representatives, House Foreign Affairs Committee, *Bureau of Industry & Security 90-Day Review Report*, available [here](#).

⁶ See U.S. Dep't of Commerce, *Department of Commerce Expands Entity List to Cover Affiliates of Listed Entities* (Sept. 29, 2025), available [here](#).

Key Takeaways

- **New 50% Affiliates Rule:** Any foreign entity 50% or greater owned (directly or indirectly, individually or in the aggregate) by one or more Entity List parties, MEU List parties,⁷ or specified SDNs is automatically subject to comparable EAR restrictions, even if not separately listed.
- **Alignment with OFAC:** BIS now expressly aligns with Treasury's longstanding 50% rule (except that the BIS rule does not apply to U.S. affiliates), thereby expanding diligence obligations under the EAR.
- **Most-restrictive Owner Concept Applies:** If multiple restricted owners hold 50% or more in the aggregate, the most restrictive license requirements, license exception eligibility, and license review policy among the owners apply to the foreign affiliate.
- **Extended Scope:** Changes apply to the Entity List (Supp. No. 4 to Part 744), MEU List (Supp. No. 7), and § 744.8 SDN programs,⁸ and conforming amendments extend the end-user scope for applicable FDP rules.
- **New Red Flag 29 and Affirmative Duty:** If a company knows a foreign counterparty has listed owners, the new Affiliates rule imposes an affirmative duty on the company to determine the listed owners' ownership percentages or obtain a BIS license before proceeding (unless a license exception applies). Importantly, the Consolidated Screening List will not capture unlisted 50% or greater owned affiliates, and companies must therefore augment screening and ownership due diligence. Furthermore, BIS highlights substantial minority ownership and interlocking directorates implicating listed entities, as well as transactions with the parents of listed entities, as raising diversionary red flags that must be resolved before a transaction proceeds.
- **Short-term TGL:** A narrow TGL authorizes certain transactions with non-listed 50% or greater owned affiliates for 60 days, subject to limits and recordkeeping.
- **Modification pathway:** Unlisted affiliates subject to restrictions by virtue of ownership may request modifications to the relevant Entity List or MEU List entries.

How the IFR Works

- **Entity List Coverage:** "The Entity List license requirements and other Entity List restrictions [] apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities..." The IFR also provides that "an entity owned 50 percent or more ... by multiple entities ... is subject to the most restrictive license requirements ... applicable to one or more of its owners." If ownership cannot be determined, exporters "must resolve the Red Flag or obtain a license."⁹
- **MEU List Coverage:** The MEU List now applies the same Affiliates rule and most-restrictive standard and compels a license if ownership cannot be determined. The IFR clarifies it "does not apply to unlisted foreign affiliates that are owned ... solely by one or more unlisted 'military end users,' unless the unlisted foreign affiliate itself meets the definition."¹⁰
- **SDN-related Coverage:** BIS extends § 744.8 to entities "owned ... 50 percent or more by one or more persons blocked pursuant to" the specified OFAC programs, and confirms parity of restrictions whether a party is listed or blocked "by operation of OFAC's 50 percent rule."¹¹

⁷ See C.F.R. Part 744, Supp. No. 7.

⁸ Section 744.8 is an EAR provision that imposes licensing requirements for exports, reexports, and in-country transfers of items subject to the EAR when an individual or entity designated on OFAC's SDN List.

⁹ See 15 CFR § 744.11; Supp. No. 4.

¹⁰ See 15 CFR § 744.21; Supp. No. 7.

¹¹ See 15 CFR § 744.8.

- **FDP Rules:** The Entity List FDP and Russia/Belarus-MEU and Procurement FDP end-user scopes now include unlisted 50% or greater owned affiliates if at least one owner meets the relevant end-user criteria. The most restrictive analysis applies.¹²
- **Red Flag 29:** When Companies have “knowledge”¹³ that a foreign entity has one or more listed owners, there is an “affirmative duty to determine the percentage of ownership ... and if that is not possible, to obtain a license ... unless a license exception is available.”¹⁴
- **New Guidance:** BIS provides EAR-specific guidelines for applying the Affiliates rule, including diligence expectations for minority-owned affiliates and parents.¹⁵ These diligence expectations include acting with heightened caution when engaging in transactions with non-listed entities in which a listed party holds a significant (but less than 50%) direct or indirect ownership interest, or with parent entities of listed parties, and requires increased scrutiny due to diversion risks.
- **TGL (Non-listed foreign affiliates):** Temporarily authorizes certain exports, reexports, and in-country transfers involving non-listed foreign affiliates 50% or greater owned by Entity List or MEU parties, with (i) authorization to A:5/A:6 destinations, and (ii) a limited JV-based authorization for affiliates of listed entities in non-E:1/E:2 destinations involved in joint ventures with entities headquartered in the United States or A:5/A:6 countries. The TGL expires 60 days after publication and has certain recordkeeping requirements.¹⁶

Practical Implications for Companies

- **Expand Counterparty Diligence:** Standard name screening will no longer be sufficient in light of the Affiliates rule. Companies may therefore consider implementing a 50% ownership analysis (direct and indirect, individually and in the aggregate) for all parties to EAR-covered transactions, including resellers, JV partners, distributors, integrators, financiers, and end-users. BIS acknowledged in the IFR that the Government’s own Consolidated Screening tool now is an inadequate resource and that there are several credible commercial solutions companies may use to conduct enhanced due diligence.¹⁷
- **Address “most-restrictive owner”:** As the IFR provides, where multiple listed owners are involved, companies should default to the strictest applicable license requirements.
- **Resolve Red Flag 29:** If companies cannot confirm ownership percentages for an entity with known listed owners, they should either resolve the red flag, obtain a BIS license, or identify an applicable license exception before proceeding.
- **Map FDP Exposure:** Foreign-produced items may become subject to the EAR under the footnote 1/3/4/5 FDP constructs when delivered to unlisted 50% or greater owned foreign affiliates. If a foreign affiliate has even one owner that meets the end-user definition in EAR § 734.9(e), the Entity List FDP requirements apply to that affiliate. The same rule applies under the Russia/Belarus Military End-User and Procurement FDP provision. For example, unlisted foreign affiliate A, 25% owned by Company 1 (footnote 3) and 25% by Company 2 (footnote 1), is captured by the Affiliates rule. Companies 1 and 2 must therefore each perform a product scope analysis for footnotes 1 and 3 to determine which controls apply to affiliate A. Companies should consider integrating FDP screening with ownership diligence.
- **Use the TGL Judiciously:** The 60-day TGL provides temporary continuity for certain A:5/A:6 transactions and specified JV scenarios. Companies relying on the TGL should confirm its scope, track the expiration, and maintain appropriate records.

¹² See 15 CFR §§ 734.9(e), (g).

¹³ Knowledge of a circumstance (the term may be a variant, such as “know,” “reason to know,” or “reason to believe”) 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. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person’s willful avoidance of facts. See Part 772.

¹⁴ See Supp. No. 3 to Part 732.

¹⁵ See Supp. No. 8 to Part 744.

¹⁶ See Supp. No. 1 to Part 736, General Order No. 7.

¹⁷ See FAQ 47 of BIS Entity List FAQs.

- **Update Policies, Contracts, and Training:** Companies may consider incorporating the Affiliates rule concept into export screening standard operating procedures and internal training, as well as in distributor and JV agreements, purchase orders, and end user/end use certifications.
- **Prepare for Increased Licensing:** BIS estimates increased license request volumes, which will require companies to factor longer timelines into supply-chain, customer-fulfillment, and financing decisions. Companies should consider modification requests where the facts support exclusion.
- **Global Reach and Strict Liability:** The Affiliates rule applies regardless of where the listed owner is organized and located and regardless of the country where an affiliate is organized and located, with the exception of the United States. And the EAR end-user restrictions are enforceable on a strict liability basis. It will also be prudent for exporters to document diligence to mitigate penalty risk.

Conclusion

BIS's Affiliates rule closes what the U.S. government has labeled a long-standing loophole by extending Entity List, MEU List, and specified SDN-related controls to unlisted 50% or greater owned foreign affiliates and by adopting a most-restrictive owner standard.

Although aligned with OFAC's 50% rule, the IFR materially elevates EAR compliance expectations by imposing an affirmative duty to determine ownership or obtain a license, expanding FDP end-user scope, and narrowing reliance on name-based, list-only screening. Companies should consider enhancing ownership diligence, updating screening tools and contracts, evaluating the use of the short-term TGL, and, where necessary, preparing license applications with supporting ownership analyses.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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