

Decoding BIS's New 50 Percent Rule: End-User Controls Extended to Affiliates

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On September 29, 2025, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") published a long-awaited [interim final rule](#) (the "Affiliates rule") amending Part 744 of the Export Administration Regulations ("EAR") to expand BIS's existing end user controls to cover affiliates of certain BIS-listed parties owned at least 50 percent or more by entities on the Entity List or the Military End User ("MEU") List. The Affiliates rule is modeled after the "50 Percent Rule" in use by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). The Affiliates rule is effective September 30, 2025, but there is a savings clause associated with this action for shipments *en route* or shipments that will be completed by October 29, 2025, described in further detail in the rule itself.

Background & Overview of the Affiliates Rule

Prior to the Affiliates rule, BIS utilized a "legally distinct" standard, where subsidiaries, parent companies, and sister companies were legally distinct from Entity/MEU-Listed entities and, therefore, not subject to the same restrictions.

BIS is removing the legally distinct standard due to concerns regarding diversion of U.S. export-controlled products and technology to entities on the Entity List, the MEU List, and other U.S. restricted parties. Under the Affiliates rule, restrictions on existing, listed Entity / MEU List parties now extend to any foreign entity that is owned 50 percent or more by one or more of the listed parties. The Affiliates Rule will also apply to the end-user scope of the Entity List FDP rules outlined in §734.9(e). This means that, in addition to listed entities, industry must also consider non-listed affiliates that are 50% or more owned—directly or indirectly, individually or collectively—by one or more listed or restricted entities when assessing whether U.S. jurisdiction is triggered for non-U.S. made items.

For now, BIS is not applying the Affiliates rule to parties on the Unverified List in supplement no. 6 to Part 744 of the EAR, or the list of parties subject to Denial Orders issued under Part 764 of the EAR.

To support compliance with the Affiliates rule, BIS added "Red Flag 29" to supplement no. 3 to Part 732 of the EAR ("Know Your Customer") guidance. It warns exporters, reexporters, and transferors that if they know a foreign entity is partly owned by listed or restricted entities, they must determine the ownership percentage. If they can't, they must get a BIS license—unless a license exception applies

BIS may apply exceptions to the Affiliates rule on a case-by-case basis by approving additions or modifications to the Entity List or MEU List if it is determined that the foreign affiliates owned by a

particular listed entity, or one specific foreign entity owned by a listed entity, do not pose a significant risk of being or becoming involved in diversion to the listed entity.

New Temporary General License for Non-Listed Parties

BIS is also creating a Temporary General License (“TGL”) for certain exports to non-listed foreign affiliates of listed entities. Specifically, the TGL authorizes exports to destinations in BIS Country Groups A:5 and A:6 (low risk countries) when a non-listed foreign entity that is subject to the Affiliate rule is a party to the transaction. This license exception also authorizes transactions to countries outside of Country Groups E:1 and E:2 (Cuba, Iran, North Korea, and Syria), if the non-listed foreign affiliate is part of a joint venture with a non-listed entity headquartered in the United States or in a Country Group A:5 or A:6 country, provided that the joint venture partner is not itself majority-owned by listed or restricted entities. Importantly, this TGL applies only to the license requirements set out in §§ 744.11 and 744.21 of the EAR and does not waive other EAR provisions, which must still be met in full. The TGL expires on November 28, 2025.

Compliance Considerations

The implementation of the Affiliates rule means that the due diligence obligation for companies has gone up significantly, and it may be the case that certain screening software may not currently have the ability to identify red flags for ownership in all necessary cases. Also, the public free Consolidated Screening List (CSL) search tool is insufficient, as it does not capture ownership structures. Similar to OFAC ownership reviews, companies will need to rely on third-party service providers for comprehensive affiliate screening.

Companies should immediately take steps to review their supply chains and customer lists to assess the risk as to whether they are conducting business with any affiliate of an Entity List or MEU List party.

Kelley Drye’s export control & sanctions team is well versed in conducting the kind of ownership and screening due diligence required by the Affiliates rule.

Please [contact](#) us if you have any questions or require screening assistance.