WILLKIE

CLIENT ALERT

BIS Brings the "50 Percent Rule" to Export Controls, Heightening Compliance Risks

October 2, 2025

AUTHORS

David Mortlock | Britt Mosman | David Levine

Update: On October 30, 2025, following a meeting between President Trump and President Xi, the United States agreed to suspend application of the BIS Affiliates Rule for 12 months as part of a temporary truce in the ongoing trade dispute between the two countries. China will suspend its export control regime on rare earth metals for 12 months. We expect BIS to issue updated guidance implementing this agreement and suspending the Affiliates Rule in the near future.

On September 29, 2025, the Bureau of Industry and Security ("**BIS**") issued an interim final rule ("**IFR**") amending the Export Administration Regulations ("**EAR**," 15 CFR Parts 730-780) to expand end-user controls to foreign entities owned 50 percent or more by parties listed on the Entity List and Military End-User ("**MEU**") List. This IFR, which BIS has dubbed the "**Affiliates Rule**," represents a true sea change in how BIS applies the Entity List and MEU List and broadly expands the obligations on companies to restrict exports to a much longer list of prohibited parties.

The new rule is intended to address diversion risks and aligns BIS's approach with the Department of the Treasury's Office of Foreign Assets Control's ("**OFAC**") so-called "50 percent rule." While technically effective immediately, a Temporary General License ("**TGL**"), provides companies 60 days (until November 28, 2025) to implement the new

restrictions, at least with respect to some transactions. A notable (though far from the only) exception to that delayed enforcement is any transaction with a Chinese-owned party that is not a joint venture with a lower-risk partner; in such situations the applicability of the Affiliates Rule is *immediate*.

Nevertheless, companies (whether in the U.S. or in foreign jurisdictions) engaged in exports, reexports, or in-country transfers of items subject to the EAR should promptly review and update their compliance programs to ensure robust ownership screening and due diligence processes are in place. Companies should give special attention to transactions involving complex or opaque ownership structures, and to the new affirmative obligations imposed by the Affiliates Rule.

I. Key Takeaways

- The Affiliates Rule extends Entity List, MEU List, and certain restrictions based on the List of Specially Designated Nationals and Blocked Persons ("**SDN List**"), to any foreign entity that is owned, directly or indirectly, individually or in the aggregate, 50 percent or more by one or more listed entities or by entities listed by BIS.

- Entities owned 50 percent or more by multiple listed parties in the aggregate are subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to *any* of their listed owners (a stricter application of the 50 percent rule than OFAC applies to aggregate sanctioned owners).

- Exporters, reexporters, and transferors are now affirmatively responsible for determining the ownership of foreign entities involved in transactions subject to the EAR. Where a listed entity has some ownership but the percentages are uncertain, parties must determine the proportion owned by the listed party or obtain a license from BIS before proceeding, unless a license exception applies.

- While the IFR is valid upon publication, the TGL authorizes certain transactions involving non-listed foreign affiliates of listed entities for 60 days following the IFR being made available for public inspection on September 29, 2025. Accordingly, the TGL will expire November 28, 2025.

- *However, end-user-based restrictions for purely Chinese entities (among others) that are owned 50 percent or more by a listed party will be applicable immediately upon publication of the IFR.*

II. Scope of New Rule

BIS's "Entity List"[1] identifies entities that BIS has reasonable cause to believe have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States.[2] Placement on the Entity List imposes additional license requirements on, and limits

[1] Supplement no. 4 to part 744 of the EAR.

[2] EAR § 744.11.

the availability of certain license exceptions for, exports, reexports, and in-country transfers of goods subject to the EAR when an Entity-Listed company is a party to the transaction.[3] The MEU List functions similarly for entities BIS has determined should be considered "Military End-Users."[4] Prior to this IFR, BIS extended Entity and MEU List-related restrictions only to related foreign entities that *were not legally distinct* from the listed entity. Accordingly, if a listed entity established a legally distinct subsidiary, that subsidiary would not be subject to the same limitations on acquiring U.S.-origin goods and technology. The Affiliates Rule changes that status quo.

Going forward, any foreign entity that is owned, directly or indirectly, individually or in the aggregate, 50 percent or more by: (1) one or more listed entities, (2) entities that are subject to export controls restrictions by virtue of being designated on the SDN List,[5] or (3) entities subject to such restrictions by operation of the Affiliates Rule, will themselves be subject to the same restrictions as the listed entity. BIS intends this change to roughly synchronize the Entity List standard with the standard used by OFAC in implementation of its "50 percent rule" with respect to parties designated on the SDN List.[6]

For entities that are owned 50 percent or more by multiple listed parties, BIS will apply the most restrictive license requirements, license exception eligibility, and license review policy applicable to *any* of their listed owners.

The IFR acknowledges that identifying direct and indirect owners—particularly for privately held companies—may prove challenging for exporters and other interested parties. However, in the IFR, BIS has put the onus for compliance squarely on the shoulders of exporters, reexporters and transferors. Entity List, MEU List, and Section 744.8 requirements are enforceable on a strict liability basis, so "knowledge" is not required to trigger these end-user requirements under the EAR. Accordingly, where an exporter (or reexporter or transferor) knows that a party to the transaction is owned by one or more listed parties, but is unsure about the percentage, the IFR establishes an affirmative duty to either determine the ownership percentage or obtain a license from BIS prior to engaging in the transaction.[7]

Even where a company does not have knowledge that a listed entity is in its counterparty's ownership chain, the company would still be liable for violations if the counterparty *is* owned 50% or more by a listed entity. BIS expects the company to adopt a risk-based approach to determining ownership in such situations (similar to OFAC's expectations in equivalent scenarios).

---

3 Under the EAR, a "party to the transaction" includes not only the purchaser, but also any intermediate consignees, the ultimate consignee (if different), and the end-user (again, if different). EAR § 748.5.

4 Supplement no. 7 to part 744 of the EAR. Note that the MEU List is not prohibitive for determining whether an entity is a "military end-user;" that is, entities may be military end-users under the EAR but have not (yet) been listed on the MEU List.

5 EAR § 744.8.

6 In fact, BIS borrowed significantly from OFAC's guidance document explaining the 50 percent rule in what will become Supplement no. 8 to part 744 of the EAR, describing implementation of the Affiliates Rule.

7 The IFR imposes this obligation by making knowledge of listed ownership a "red flag" that must be resolved pursuant to Supplement no. 3 to Part 732 of the EAR.

Table 1 below summarizes the status of various entities following implementation of the IFR.

Type of Entity	Impact of the IFR
A foreign entity listed on the Entity List, MEU List, or in SDN designations in § 744.8(a)(1), including any branch or sales office that is not legally distinct from the listed entity.	• These entities are currently subject to end-user-based restrictions, and remain so following the publication of the IFR.
Foreign affiliates of listed entities owned 50 percent or more, directly or indirectly, by one or more listed entities on the Entity List, MEU List, or an SDN identified in § 744.8(a)(1).	• These entities are now subject to end-user-based restrictions by virtue of their parent's (or parents') designation. • The most restrictive requirements applicable to a listed parent apply to these entities. • These requirements apply to all foreign countries regardless of under which destination the listed entity or entity's owners are listed. • A TGL is applicable to some of these entities until November 28, 2025.
Foreign affiliates of listed entities that have some direct or indirect ownership by listed entities on the Entity List, MEU List, or by SDNs in § 744.8(a)(1), but the exporter, reexporter, or transferor cannot determine whether the listed entity ownership meets the Affiliates rule.	• Exporters, reexporters, and transferors have an affirmative duty to determine the entity's ownership. • If the exporter, reexporter, or transferor seeks a license, the most restrictive requirements applicable to a listed parent will apply. • The IFR makes the inability to determine ownership percentage (with knowledge that a listed entity has some ownership interest) a "Red Flag" under supplement no. 3 to part 732 of the EAR ("BIS's 'Know Your Customer' Guidance and Red Flags"). The IFR specifies that the exporter, reexporter or transferor must resolve the Red Flag by determining the party's

Type of Entity	Impact of the IFR
	ownership or obtain a license from BIS prior to proceeding with the transaction.
Foreign companies where there is no "knowledge" that the foreign entity is owned by a listed entity.	• Exporters, reexporters, and transferors are responsible if they engage with a foreign entity that is in fact owned 50 percent or more by a listed entity on the Entity List, MEU List, or an SDN designation under § 744.8, or by entities subject to restrictions based upon their ownership. • Lack of "knowledge" in this instance may mitigate a penalty, but will not excuse a violation. • BIS expects exporters, reexporters, and transferors to adopt a risk-based compliance program with respect to the Affiliates Rule.
U.S. entities owned by listed entities.	• The Affiliates Rule applies only to foreign entities, and so the IFR does not impose restrictions on these entities.

In general, the IFR is applicable immediately upon being made available for public review on September 29, 2025. However, for certain transactions that would now be subject to restrictions because of the Affiliates Rule, a temporary general license—the TGL—is available for the next 60 days (until November 28, 2025). Specifically, the TGL authorizes:

- exports, reexports, or transfers to or within any destination in Country Group A:5 or A:6 (groups that include 49 countries combined)[8] when a company that would otherwise be covered by the Affiliates Rule is a party to the transaction; and

- exports, reexports, or transfers to or within any country other than Cuba, Iran, North Korea, or Syria when a party to the transaction would otherwise be covered by the Affiliates Rule; *and* that party 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 itself covered by the Affiliates Rule.

[8] Supplement no. 1 to part 740 of the EAR.

Accordingly, transactions to or within jurisdictions in Country Group A:5 or A:6,[9] or that involve non-listed joint venture partners from Country Groups A:5 or A:6 will be authorized for 60 days following publication of the IFR, regardless of whether a party is owned 50% or more by a listed entity.

Notably, however, the TGL does not include transactions with entities in China (which is not in Country Group A:5 or A:6) that are not JVs with an A:5, A:6, or U.S.-based partner.[10] Accordingly, *end-user-based restrictions for purely Chinese entities that are legally distinct but owned 50 percent or more by a listed party will be applicable upon publication of the IFR.* Other non-A:5 or A:6 countries, such as Indonesia or the United Arab Emirates, are also subject to the IFR's restrictions immediately upon publication.

III. Compliance Considerations

Particularly given the immediate applicability with respect to certain jurisdictions (notably China), we recommend that all businesses review their compliance procedures as soon as possible to ensure they are capable of complying with the IFR.

While BIS has stated that it expects relatively few difficulties with compliance because the Affiliates Rule mirrors the 50 percent rule OFAC already applies, the applicability of the Affiliates Rule is much broader. Where most OFAC sanctions programs primarily prohibit U.S. persons from transacting with persons on the SDN List, the EAR's end-user restrictions are applicable to any person (U.S. and non-U.S., wherever located) that transacts in goods that are subject to the EAR.[11] Accordingly, even foreign companies are now expected to know the direct and indirect owners of counterparties they do business with, if those counterparties might come into contact with goods subject to the EAR.

Moreover, the so-called end-user-based restrictions are not truly applicable only to "end-users." Instead, license requirements for listed entities come into play any time such an entity is a "party to a transaction." This includes not only end-users, but also consignees and purchasers to the extent they are different.

IV. Conclusion

As noted above, the adoption of the so-called Affiliates Rule represents an incredibly significant change to the application and import of the Entity List and MEU List. Because the Affiliates Rule is being published as an "Interim Final Rule," BIS is accepting comments from interested parties for the next 30 days. However, we expect the substance of the Affiliates Rule as published in this IFR to remain substantially unchanged regardless of public comment.

---

9 *Id.*

10 Chinese JVs with such a partner would qualify for the TGL under the second bullet point above.

11 Under the EAR, this includes U.S.-origin goods, but also foreign-produced goods that contain more than a de minimis level of controlled U.S.-origin content.

We encourage all businesses that transact in goods subject to the EAR to review their compliance programs and ensure that procedures are in place to manage the increased screening obligations the Affiliates Rule imposes. This is particularly true for businesses for whom China (or other non-A:5/A:6 countries) is an important market and compliance will be an immediate necessity.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

David Mortlock	Britt Mosman	David Levine
202 303 1136	202 303 1057	202 303 1062
dmortlock@willkie.com	bmosman@willkie.com	dplevine@willkie.com

WILLKIE

BRUSSELS CHICAGO DALLAS FRANKFURT HAMBURG HOUSTON LONDON LOS ANGELES
MILAN MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

Copyright © 2025 Willkie Farr & Gallagher LLP. All rights reserved.

This alert is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: www.willkie.com.