

New BIS Rule Expands Export Restrictions to Entities 50% Owned by Parties on the Entity and Military End-User Lists

Skadden

September 30, 2025

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

1440 New York Ave., NW
Washington, DC 20005
202.371.7000

Executive Summary

- **What's new:** A U.S. Commerce Department interim final rule vastly expands the number of entities subject to export control restrictions by extending the Entity List and MEU List restrictions to non-U.S. entities 50% or more owned, directly or indirectly, by listed parties effective as of September 29, 2025.
- **Why it matters:** Greatly increasing the number of entities subject to these restrictions and requiring comprehensive ownership analyses as part of due diligence will make it more complicated and time-consuming for exporters to ensure compliance with the law, and increases the risk of violations. The rule applies to all transactions subject to the U.S. Export Administration Regulations, including companies with U.S. parts or technologies in their supply chains, whether based in the U.S. or not.
- **What to do next:** Exporters will want to rescreen customers, suppliers and distributors for their ultimate ownership, and possibly wind down sales if end users are now subject to the widened restrictions. Contracts may also need to be reviewed for compliance with the new rule, and internal red flag mechanisms may need to be established.

On September 29, 2025, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) released [a long-anticipated interim final rule](#) (IFR) that will result in the most dramatic expansion of U.S. export control regulations in years. The IFR, "Expansion of End-User Controls To Cover Affiliates of Certain Listed Entities," extends export restrictions to any company owned 50% or more, directly or indirectly, by any of the thousands of entities already designated on several Commerce and Treasury Department lists.

The IFR would also impose a new duty on exporters to investigate the ownership of an end user where there is reason to believe a designated entity holds a minority stake, or is affiliated with, the end user, subject to a strict liability standard for violations.

Summary of the Restrictions

The IFR applies to entities 50% or more owned by parties designated on the BIS Entity List and the Military End User (MEU) List. Until now, the Entity List and the MEU List were considered "entity-specific" lists, so that export control restrictions for a listed party did not extend to "legally distinct" affiliates owned by the listed party. The IFR overturns the existing framework, so the Entity List and MEU List restrictions now extend to any non-U.S. entity that is owned 50% or more, directly or indirectly, by one or more listed parties (the Affiliates Rule or BIS 50% rule).

The new restrictions apply to transactions subject to the U.S. Export Administration Regulations (EAR) involving any of the nearly 3,500 parties on the Entity List and MEU list, as well as thousands of parties on the Department of Treasury's Office of Foreign Assets Control's (OFAC's) List of Specially Designated Nationals and Blocked Persons (SDN List).

Given the aggressively extraterritorial dimensions of the EAR, the IFR imposes significant obligations on any company with U.S. parts or technologies in its supply chain. In particular, the Affiliates Rule will apply to the Entity List Foreign-Direct Product (FDP)

New BIS Rule Expands Export Restrictions to Entities 50% Owned by Parties on the Entity and Military End-User Lists

Rule and the Russia/Belarus MEU and Procurement FDP Rule, which means that the end-user scope of these extraterritorial FDP rules now include affiliates.

Where a non-listed affiliate is more than 50% owned in aggregate by multiple entities on the Entity List, MEU List or SDN List, BIS will apply the “rule of most restrictiveness,” in which the affiliate will be subject to the most restrictive license requirements, license exception eligibility and license review policy applicable to any of its owners under the EAR.

Due diligence obligation. While the Affiliates Rule is based on OFAC’s 50% rule for parties on the SDN List, the diligence obligations imposed by the Affiliates Rule are in some ways more complex and more prescriptive, and leave less room for individual judgment, than those imposed by OFAC.

The IFR indicates that “significant minority ownership” or “other significant ties to” an Entity List or MEU List party presents a “red flag” triggering the need for additional due diligence. The IFR adds one new Red Flag 29 to the EAR: If an exporter cannot determine the ownership percentage of a foreign party, and the exporter knows (or has reason to know) the foreign party is owned in part by an Entity List or MEU List party, the EAR now creates an “affirmative duty” on the exporter to ascertain the ownership percentage (or obtain a license or identify an applicable license exception) before proceeding.

Because compliance with EAR licensing requirements is subject to a “strict liability” standard, even careful diligence may fall short of the mark and result in violations. By contrast, OFAC regulations do not impose explicit diligence obligations with respect to entities that appear to be minority-owned by parties on the SDN List. Rather, OFAC expects parties to take a risk-based approach to compliance, including when navigating sanctioned party interests.

Licenses and modifications. The IFR creates a temporary general license (TGL) that authorizes some export, reexport and transfer (in-country) transactions involving non-listed affiliates until November 28, 2025. Specifically, the TGL authorizes exports, reexports or transfers (in-country) to or within any Country Group A:5 or A:6 countries (*i.e.*, most U.S. allies and partners) when an affiliate is a party to the transaction; and exports, reexports or transfers (in-country) to or within any countries not embargoed by the U.S. (*i.e.*, countries that are not in Country Group E:1 or E:2 countries) when an affiliate is a party to the transaction and that affiliate is a joint venture with a non-listed and non-affiliate entity that is headquartered in the U.S. or Country Group A:5 or A:6.

The IFR also allows for a modification request process, in which non-listed 50% or more owned-affiliates can request that BIS

specifically exclude them from the designated party’s listing on the Entity List or MEU List. BIS states that exceptions to the Affiliates Rule may apply if the End-User Review Committee (ERC) determines that the affiliates that are owned by a particular listed party “do not pose a significant risk of being or becoming involved in diversion to the listed entity.” The ERC will make determinations regarding the applicability of these exceptions in accordance with the procedures set out in the EAR.

Impact on Industry

U.S. and non-U.S. companies involved in the export, reexport, or in-country transfer of items subject to the EAR promptly should consider taking action to assess and mitigate the impact of the new rule on their businesses. For example:

- Review the Entity List and MEU List rules, including the FDPs impacting non-U.S. production and sales, to identify any sales and other shipments by the company of items “subject to” the EAR.
- Rescreen existing customers, suppliers, distributors and other third-party vendors of items “subject to” the EAR to check for parties owned 50% or more, individually or in aggregate, by listed entities on the Entity List, MEU List, and/or the SDN List. Where ownership information is not available publicly or other reputable sources (*e.g.*, a third-part screening vendor), seek information directly from customers or other counterparties.
- Where screening reveals a “hit,” wind down relevant shipments and export activity immediately unless the relevant transaction qualifies for the 60-day TGL described above or a license exception. This excludes the shipment of items that were en route on September 29, 2025, pursuant to actual orders for export, reexport or transfer (in-country) to or within a foreign destination, provided that the export, reexport or transfer (in-country) is completed no later than October 29, 2025 — *i.e.*, 30 days after the IFR was published.
- Review contractual clauses and terms to ensure that they account for the new Affiliates Rule.
- Establish new internal red flags to review and conduct diligence in scenarios in which counterparties may have a large ownership stake held by one or more parties on the Entity List, MEU List or SDN List.
- Where a violation of the Affiliates Rule is discovered, consider a disclosure to BIS.

In the IFR, BIS acknowledges that the Affiliates Rule “may require additional analysis by the private sector ... in order to comply.” In our view, this statement by BIS significantly understates the efforts that may be required to comply with this new rule, particularly in light of the potential consequences for any compliance failures.

New BIS Rule Expands Export Restrictions to Entities 50% Owned by Parties on the Entity and Military End-User Lists

Expansion of End-User Controls To Cover Affiliates of Certain Listed Entities

Types Of Entities	Application Notes
Listed entities. 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	<ul style="list-style-type: none">- These entities are currently subject to Entity List, MEU List, and § 744.8 restrictions under the 'legally distinct' standard and will continue to be subject to such restrictions under the Affiliates rule.- These requirements applied to all addresses of these entities located in the destination under which the entities were listed.- Prior to this IFR, there were three entities on the Entity List that were subject to a worldwide license requirement.- Because of the changes made in this IFR, the requirements for all listed entities on the Entity List, MEU List, and the requirements in § 744.8 will now apply to all foreign countries.- For example, an entity listed on the Entity List under China has a sales office in Malaysia. Prior to this IFR, the sales office in Malaysia of the listed Chinese entity was not included within the scope of the Entity List license requirements, unless BIS listed that Chinese sales office in Malaysia also on the Entity List or there was information that the item was intended for the listed Chinese entity.
Foreign affiliates of listed entities that meet the Affiliates rule. 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) or by one or more entities subject to restrictions based upon ownership	<ul style="list-style-type: none">- These entities meet what is described in this IFR as the Affiliates rule and are subject to the license requirements and other restrictions under the Entity List, MEU List, or § 744.8.- This is an expansion of the Entity List, MEU List, and § 744.8 license requirements that is needed to protect U.S. national security and foreign policy interests because of the diversion concerns with these entities.- These requirements apply to all foreign countries regardless of under which destination the listed entity or entity's owners are listed.- This IFR adds a TGL that temporarily authorizes (i) exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership, and (2) exports, reexports, or transfers (in-country) to or within any destination other than Country Group E:1 or E:2 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership; 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 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List or entities subject to Entity List or MEU List restrictions based upon its ownership. The TGL expires on December 1, 2025.

New BIS Rule Expands Export Restrictions to Entities 50% Owned by Parties on the Entity and Military End-User Lists

Types Of Entities	Application Notes
<p>Foreign affiliates of listed entities owned by listed entities where percentage of ownership cannot be determined (unresolvable Red Flag entities) 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</p>	<ul style="list-style-type: none"> - The Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis, so “knowledge” is not required to trigger these end-user requirements under the EAR, although “knowledge” is a factor that is considered when determining penalty calculations for a violation of the EAR. - By adding a requirement to resolve the red flag to §§ 744.11 and 744.21, BIS is informing the public that when an exporter, reexporter, or transferor has “knowledge” that a foreign entity has one or more direct or indirect owners that are listed on the Entity List or MEU List, it has an affirmative duty to determine the percentage of ownership of those listed entities and if that is not possible, to obtain a license from BIS if required under the Entity List or MEU List based on the requirements for the listed owner or owners of that foreign entity, unless a license exception is available. - Because of diversion concerns to listed entities, including concerns about listed entities obfuscating their ownership stakes in foreign affiliates of listed entities as a method to evade Entity List or MEU List license requirements, this IFR specifies that the exporter, reexporter or transferor must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available.
<p>Foreign companies where there is no “knowledge” that the foreign entity is owned by a listed entity</p>	<ul style="list-style-type: none"> - BIS advises exporters, reexporters, and transferors to exercise due diligence as part of their internal compliance programs with such foreign companies because as noted in the previous row, the Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis. - This means that 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. - Accordingly, exporters, reexporters, and transferors have an affirmative responsibility to know the ownership of the foreign companies that are parties to a transaction. - Exporters, reexporters, and transferors must adopt a risk-based compliance program to assist them in complying with these requirements. - Supplement No. 3 to Part 732—BIS’s “Know Your Customer” Guidance and Red Flags is an EAR regulatory resource that assists exporters, reexporters, and transferors in developing their compliance programs.
<p>U.S. entities owned by listed entities</p>	<ul style="list-style-type: none"> - This IFR does not impose restrictions, as the Affiliates rule established in this IFR applies only to foreign companies, nor does it limit any compliance obligations that may exist under other provisions of the EAR or under the regulations of other agencies.

New BIS Rule Expands Export Restrictions to Entities 50% Owned by Parties on the Entity and Military End-User Lists

Contacts

Brian J. Egan

Partner / Washington, D.C.
202.371.7270
brian.egan@skadden.com

Eytan J. Fisch

Partner / Washington, D.C.
202.371.7314
eytan.fisch@skadden.com

Ondrej Chvosta

Associate / Washington, D.C.
202.371.7579
ondrej.chvosta@skadden.com

Barbra E. Kim

Associate / Washington, D.C.
202.371.7391
barbra.kim@skadden.com

Kimberly Shi

Associate / Washington, D.C.
202.371.7344
kimberly.shi@skadden.com