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The Affiliates Rule: Expanded End User Export Controls

Client Alerts

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On September 30, 2025, the Commerce Department's Bureau of Industry and Security (BIS) published the much-anticipated "Affiliates Rule," applying the precepts of the Treasury Department's Office of Foreign Assets Control's (OFAC) 50% rule to the BIS Entity List and Military End-User (MEU) List. Accordingly, any entity that is 50% or more owned by one or more parties on the Entity List or the MEU List is now subject to the same export restrictions as those listed parties, even if that entity is not itself named on the list.

In a statement accompanying the rule, Under Secretary of Commerce for Industry and Security Jeffrey I. Kessler explained that the change was made to close "loopholes that have enabled exports that undermine American national security and foreign policy interests." In particular, BIS is concerned that the old approach enabled "diversionary schemes, such as the creation of new foreign companies to evade Entity List restrictions."

Previously, BIS used a "legally distinct" standard for applying restrictions to subsidiaries and other foreign affiliates of entities identified on the Entity List, meaning that only the listed entities were subject to the applicable export controls and licensing policies. This is no longer the case, and businesses must ensure that their export control policies, procedures, and screening processes account for the significant expansion in the application of export control restrictions. This client alert identifies seven key features of the rule and seven best practices to comply.

Seven Key Features of the Rule that Inform Compliance

1. The most restrictive of different Entity List license requirements apply when an entity is 50% or more owned by multiple listed owners subject to different licensing postures.

2. There is an affirmative duty to determine the percentage of ownership of known listed entities and, if that is not possible, to obtain a license from BIS.

3. The rule extends to SDN List entities subject to export controls under the EAR.

4. BIS has issued a Temporary General License (TGL) that authorizes transactions involving non-listed 50-percent or more owned foreign affiliates of certain parties on the Entity List or MEU List for 60 days from publication (until November 28, 2025).

5. The rule does not apply to all BIS lists. It currently excludes those listed on the Unverified List or the list of parties subject to Denial Orders.

6. BIS may apply exceptions to the rule on a case-by-case basis if it determines that the foreign affiliates do not pose a significant risk of being or becoming involved in diversion to the listed entity.

7. Significant minority ownership by an entity on the Entity List or MEU List is a red flag that will trigger additional due diligence requirements for exporters.

Seven Best Practices to Comply

The following steps will help companies to review and update their export compliance programs to account for newly controlled Entity List and MEU-List affiliates.

1. *Assess screening software and processes* to ensure that they account for ownership structures across all subsidiaries and affiliates.

2. *Re-screen customer and related databases* to identify newly restricted parties.

3. *Ensure Know Your Customer due diligence procedures account for the expanded reach of restrictions.*

4. *Review and scrutinize end use representations* in light of the new requirements.

5. *Update due diligence procedures in corporate transactions*. Acquiring companies will need to conduct more robust assessments of potential export control risks related to ownership and affiliations.

6. *Revise export control clauses in business agreements* to account for the scope of the rule.

7. *Train personnel* about the expanded reach of US end user controls and the changes in compliance systems to address them.

If you identify a concern with this rule or its planned implementation, BIS is accepting comments until October 29, 2025.

Jenner & Block attorneys are experienced in navigating export controls and drafting and submitting regulatory comments. We can also assist clients with efficient compliance counseling and defense in government investigations and enforcement actions.

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