

Title: BIS Expands Restrictions: 50% Rule Explained

Brief Overview: On September 30, 2025, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued an interim final rule (Affiliates Rule) that significantly expands the scope of controls to cover certain affiliated parties on the BIS Entity List and Military End Users List (MEU List).

The Affiliates Rule applies restrictions to entities that are at least 50% owned by entities that are listed on either the BIS Entity List or the MEU List.

Learn more about the Affiliates Rule, including key takeaways that are critical for companies to understand, including the difference between the previous standard and the new standard, compliance challenges, and possible paths forward.

Full Article: On September 30, 2025, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued an interim final rule (Affiliates Rule) that significantly expands the scope of controls to cover certain affiliated parties on the BIS Entity List and Military End Users List (MEU List). The Affiliates Rule applies restrictions to entities that are at least 50% owned by entities that are listed on either the BIS Entity List or the MEU List. The 50% ownership standard established in the Affiliates Rule is designed to be consistent with longstanding U.S. Department of the Treasury Office of Foreign Assets (OFAC) practices. The Affiliates Rule became effective immediately on September 29, 2025. As a result, it is critical that companies understand and comply with the scope of the Affiliates Rule immediately.

The Affiliates Rule is an interim final rule and may be revised based on comments received from the public. The comment period for the Affiliates Rule is open until October 29, 2025. If you desire to prepare and submit comments on the Affiliates Rule to BIS, Buchanan Ingersoll & Rooney stands ready to support you with the crafting of comments and any follow-on discussions with the Department of Commerce.

Understanding the Difference Between the Previous Standard and the New Standard

With the issuance of the Affiliates Rule, BIS has moved away from a policy whereby only entities that were expressly listed on the Entity List or the MEU List were subject to pertinent restrictions under the EAR. The restrictions under the Entity List and the MEU List did not apply to subsidiaries and other foreign affiliates of entities identified on these lists.

Prior to publishing the Affiliates Rule, branches of entities enumerated on the Entity List and the MEU List were covered by the Entity List and MEU List restrictions, but not "legally distinct" subsidiaries and affiliates. For example, a branch of a listed entity, even if it were operating under a different name, would not be considered legally distinct and would have been subject to the listed entity's restrictions. However, a separate legal entity that was majority-owned by a listed entity was considered legally distinct and, therefore, not subject to the listed entity's restrictions.

With the Affiliates Rule, BIS has established a new standard, with BIS stating that the new rule is necessary to address concerns such as diversion, evasion, and ease of administering sanctions. According to BIS, diversion was too likely an outcome under the previous standard because a sanctioned entity only needed to establish a new legal entity outside of the country in which it primarily operates to receive goods without restrictions. That affiliated entity would then reexport the pertinent goods to sanctioned parties, not being concerned with compliance with the EAR. This, along with other evasion schemes, resulted in a resource-intensive yet piecemeal approach to administering restrictions. Accordingly, per BIS, the Affiliates Rule is intended to make it easier for BIS to administer appropriate sanctions on bad actors.

Under the Affiliates Rule, BIS is adopting a 50% rule for export controls that is akin to the 50% rule that has been administered by OFAC in the context of economic sanctions. This provides that in addition to subjecting listed entities to restrictions, such restrictions will also extend to entities that are owned 50% or more, directly or indirectly, individually or in the aggregate by one or more listed entities – on either the Entity List or the MEU List.

Compliance Challenges Under the Affiliates Rule

While BIS believes that the Affiliates Rule is required to protect U.S. national security, compliance with the Affiliates Rule raises a number of practical challenges for U.S. and foreign companies that must adhere to export, reexport, and transfer requirements for goods that are subject to the EAR. First, the Affiliates Rule automatically requires significantly more extensive due diligence and ownership analysis. Inherently, this shifts the burden from simply checking Commerce’s Consolidated Screening List to analyzing ownership structures of entities that are often privately held.

A secondary challenge is that the Affiliates Rule applies a burden on U.S. exporters and foreign reexporters to perform expanded due diligence on public companies worldwide where one or more Entity List and MEU List entities hold greater than 50% ownership of a company in the aggregate. This is a significantly difficult process, as the existing restricted party screening tools in the marketplace do not include the ability to aggregate ownership by multiple different sanctioned entities. We believe that this capability will likely be rolled out by various online providers of restricted party search tools in the coming months, but the expansion of the restricted party screening tools will not be an easy task to perform, especially given that the Affiliates Rule effectively makes not only the listed entity on the Entity List and MEU List a sanctioned entity, but also automatically makes all majority owned affiliates sanctioned entities as well. The consequence of this is that the due diligence system for validating ownership of foreign parties must take into account ownership information of companies, both by listed entities and all of their majority-owned affiliates.

A third challenge posed by the Affiliates Rule is found in Red Flag 29 posted to the BIS “Know Your Customer” guidelines in which BIS has stated that U.S. exporters and foreign reexporters have “an affirmative duty to determine whether the recipient of goods subject to the EAR is owned in the aggregate by Entity List and MEU List entities and their majority owned affiliates at a percentage above 50%. Where the exporter or reexporter cannot determine the percentage of ownership by Entity List and MEU List entities and their majority owned affiliates of the recipient of goods subject to the EAR, the exporter or reexporter is directed to obtain a license from BIS, as would be required if the recipient were listed on the Entity List or the MEU List, unless a license exception is available.

This means that U.S. exporters and foreign reexporters need to immediately implement systems for determining whether parties to export transactions involving goods subject to the EAR – including EAR99 goods – are majority owned, in the aggregate by Entity list entities, MEU List entities and majority owned affiliates of these entities. This applies to both public and private companies.

In each of these scenarios, due diligence is made considerably more difficult by the lack of available or reliable information in certain countries. Given the tension between the lack of visibility and the centrality of enhanced diligence necessary to comply with the Affiliates Rule, it is important that companies quickly and thoroughly assess their processes and, where appropriate, seek support from legal counsel.

Possible Paths Forward

For companies impacted by the Affiliates Rule, they may qualify for a new Temporary General License (TGL) under the EAR, which permits certain export, reexport, and transfer (in-country) transactions involving non-listed 50% or more owned foreign affiliates of parties on the Entity List or Military End-User List. However, the TGL provides only a short window for companies to more broadly comply with the Affiliates Rule, because the TGL is eligible to be used for only 60 days from the publication of the Affiliates Rule in the Federal Register, November 28, 2025. This is one area where we expect commenters to advise that 60 days is not sufficient time.

Buchanan has a team of [international trade and national security attorneys, economists, accounting analysts,](#) and [government relations professionals](#) ready to help companies with U.S. national security laws and international trade. Our dedicated team has decades of experience supporting clients across a range of industries – ranging from defense, aerospace, steel and iron industries, critical minerals, chemicals, and technology – to assist companies.

Author(s)’ Name(s), Title(s), and Email(s):

Daniel B. Pickard

Shareholder

International Trade & National Security Practice Group Leader

Email: daniel.pickard@bipc.com

Keil J. Ritterpusch

Shareholder

Email: keil.ritterpusch@bipc.com

Natan P.L. Tubman

Associate

Email: natan.tubman@bipc.com