

BIS Expands Export Controls with New Affiliates Rule

October 21, 2025

On September 29, 2025, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) issued a pivotal interim final rule under the U.S. Export Administration Regulations (“EAR”) significantly broadening the scope of end-user-based export controls (the “Affiliates Rule”). Effective immediately, the Affiliates Rule extends end-user-based licensing requirements to foreign entities that are, directly or indirectly, owned 50 percent or more, individually or in aggregate, by entities on the Affiliate Lists.

The Affiliates Rule

The Affiliates Rule expands existing export control restrictions to cover export, reexport, and transfer (in-country) of items subject to the EAR involving any entity that is 50 percent or more owned, directly or indirectly, individually or in aggregate, by one or more parties designated on the: (i) Entity List (“Entity List”), (ii) Military End-User List (“MEU List”), or (iii) Specially Designated Nationals and Blocked Persons designated under programs listed in EAR Part §744.8 (“SDN List”)(collectively, the “Affiliate Lists” and “Targeted Affiliates”). The Affiliate Lists identify individuals, organizations and addresses that are subject to export, reexport and transfer (in-country) restrictions involving items subject to the EAR.

BIS has historically applied a “legally distinct” standard distinguishing subsidiaries and other legally distinct affiliates of the entities on the Affiliate Lists, thereby excluding such entities from licensing requirements. This change now aligns the Affiliate Lists with the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) sanction list restrictions, many of which have historically applied a 50 percent rule to include affiliated entities.

Moreover, Targeted Affiliates may be subject to rules arising from more than one restricted entity on an Affiliate List, so the Affiliates Rule applies the “rule of most restrictiveness,” making the Targeted Affiliate subject to the strictest license requirements applicable and ensuring that Targeted Affiliates cannot benefit from less stringent controls due to diversified ownership among entities on the Affiliate Lists. The preamble to the Affiliates Rule includes direct examples applying the “rule of most restrictiveness” (see Affiliate Rule; Preamble Part II (A)(2)). BIS has published updated Entity List FAQs to assist with nuanced compliance obligations, and BIS will be accepting public comments on the Affiliates Rule through October 29, 2025.

Screening Requirements

The Affiliates Rule adds significant compliance screening obligations:

“When an exporter, reexporter, or transferor has ‘knowledge’ that a foreign entity that is a party to the transaction has one or more owners that are listed on the Entity List or the MEU List, it has an affirmative duty to determine the percentage of ownership by 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” (see Affiliate Rule; EAR Part §732 Supplement No. 3 to Part 732—BIS’s [“Know Your Customer” Guidance and Red Flags](#)).

Pursuant to FAQ 41, these screening obligations mean:

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- “An exporter, reexporter, or transferor with “knowledge” that a party to the transaction has an owner or owners that are on the Entity List or MEU List has an affirmative duty to determine the percentage of ownership.
- If the exporter, reexporter, or transferor is not able to determine the percentage of ownership, the exporter, reexporter, or transferor must apply for a license from BIS if a license is required under the Entity List or MEU List for the listed owner(s).
- If an exporter, reexporter, or transferor does not apply for a license and subsequently it is determined that the party to the transaction was in fact subject to a license requirement . . . the exporter, reexporter, or transferor may be determined to have had “knowledge” that a violation was about to occur and continued to proceed with the transaction. . . .” (see FAQ 41).

For those instances when ownership cannot be reliably determined under the Affiliates Rule, then exporters, reexporters or transferors must treat the Red Flag 29 situation as triggering a duty to: (i) conduct further due diligence, (ii) resolve the ownership question, or (iii) seek a license from BIS before proceeding with the transaction, unless a license exception is available. Red Flag 29 is part of BIS’s long-standing “Know Your Customer” guidance, which outlines specific warning signs, known as red flags, that may indicate a transaction involving a prohibited end-user, end-use, or destination. Knowledge under the EAR includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence.

Savings Clause, TGL, and Removal Requests

Within the Affiliates Rule, BIS provided a savings clause permitting shipments en route pursuant to actual orders with the transfer completed by no later than October 29, 2025, to avoid the new requirements under the Affiliates Rule. BIS also issued a narrowly tailored Temporary General License providing limited transitional relief (“TGL”). The TGL permits the following transactions to proceed without the new additional scrutiny:

- exports, reexports or transfers (in country) to or within any Country Group A:5 or A:6 countries when an affiliate is a party to the transaction; or
- exports, reexports or transfers (in-country) to or within any destination other than Country Group E:1 or E:2 countries (i.e., Cuba, Iran, North Korea, and Syria) 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” (see Affiliate Rule; EAR Part §736; Supplement No. 1 to Part 736—General Orders).

Country Groups A:5 and A:6 collectively cover a broad range of U.S.-allied countries, while excluding countries such as China and Russia. The limited TGL transitional relief lasts for a 60-day period ending November 28, 2025.

The Affiliates Rule also expanded the Entity List removal request process of EAR Part §744.16 to accommodate requests from Targeted Affiliates. The request for modification may be submitted for review to the interagency End-User Review Committee composed of representatives of the Departments of Commerce, War, Energy, State, and potentially Treasury.

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Compliance Steps: How to Comply with New Affiliates Rule

Consistent with the Affiliates Rule, BIS clarifies that the Consolidated Screening List no longer comprises an exhaustive list of foreign entities subject to restrictions, so reliance on the Consolidated Screening List alone is insufficient. To mitigate risk and ensure compliance, companies must promptly reassess internal compliance protocols to review existing counterparty relationships, pending transactions, and export activities to ensure alignment with the new regulatory expectations by evaluating whether supplemental diligence is necessary in light of the broadened scope of the Affiliates Rule.

Additional compliance steps may include (i) screening distributors and customers for a nexus to Targeted Affiliates, (ii) reviewing and revising end-use/end-user certifications to better flag Targeted Affiliates, and (iii) mapping ownership structures to identify entities that may be Targeted Affiliates.

Conclusion

Companies involved in the export, reexport, or transfer (in-country) of items subject to the EAR must promptly reassess internal compliance protocols to review existing relationships with distributors, supply chain participants, and customers. They also must undertake robust due diligence, particularly with respect to ownership and affiliation structures; otherwise, companies risk exposure to the strict liability and administrative penalties of BIS.

If you have any questions about the Affiliates Rule and its requirements, or required due diligence, please contact the authors of this alert or your Miller Canfield attorney.