October 29, 2025

The Honorable Jeffrey I. Kessler
Undersecretary for Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, D.C. 20230

RE: BIS 2025-0017-01 Interim Final Rule "Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities" [Docket No. 250509-0083]
RIN 0694-AK11

Dear Undersecretary Kessler:

The National Foreign Trade Council (NFTC) appreciates this opportunity to comment on the Bureau of Industry and Security's (BIS) Interim Final Rule, "Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities," which became effective September 29, 2025. This rule is also referred to as the "Affiliates Rule".

We understand the potential national security implications of parties of diversion concern being able to circumvent regulatory and other control measures to access U.S.-controlled items and technology. We write to raise concerns regarding difficulties in implementing compliance measures required by this Rule. We also note with concern the broad trade implications of this Rule, especially the disproportionate impact on non-sensitive commercial trade. Lastly, we offer several recommendations to enhance the potential effectiveness of this Rule by improving consistency in compliance measures.

Overview

The Affiliates Rule became effective immediately upon **pre**-publication in the Federal Register, making full compliance on that day impossible. Moreover, publication as an Interim Final Rule (IFR) bypassed the longstanding rulemaking procedure of issuing either an Advance Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM) to gather public comments and consult with industry.

The Affiliates Rule significantly expands the impact of the Entity List, Supplement 4 to Part 744 of the Export Administration Regulations (EAR), by extending restrictions to thousands of parties that are not currently designated on the Entity List and may never be. The additional new requirement to consider ownership interest by parties on the Military End-User List (MEU), Supplement 7 to Part 744 of the EAR, and certain Specially Designated Nationals or Blocked Persons (SDNs) subject to Part 744.8 of the EAR, exponentially

increases the scope and jurisdiction of these restrictions[1]. Requiring U.S. exporters and reexporters to determine the ability of current and future business partners around the world to receive U.S. origin items and technologies requires first establishing whether a business partner is in fact an affiliate of an Entity List or MEU designee or SDN, then calculating whether the aggregated business ownership by such parties exceeds 50%[2]. Estimates of these non-designated parties now subject to Entity List restrictions are in the tens of thousands, with some estimating that this Rule effectively expands the Entity List by more than ten times.

IFR questions

Should BIS lower the 50% ownership threshold?

No. Lowering the 50% ownership threshold would further limit the pool of prospective business partners that U.S. companies may export to and require closer scrutiny of existing contractual agreements without an obvious gain in securing national security.

Should BIS extend the Affiliates Rule to other end-user lists in the EAR?

No. The inclusion of MEUs and SDNs in Part 744.8 already significantly expands and complicates the implementation of Entity List restrictions on non-designated end-users based on ownership analysis. Extending this Rule to other EAR end-user lists amplifies compliance complexities discussed elsewhere.

Concerns

Impractical and Inconsistent Compliance

BIS has sophisticated tools and access to non-public sources of information to identify entities of concern and, where necessary, require U.S. exporters/reexporters to obtain export licenses subject to risk-based licensing policies. BIS also leverages the global resources of its Office of Export Enforcement (OEE), including special agents, analysts, and others, to investigate and disrupt illicit procurement networks. OEE leads interagency engagement on these investigations, including through the Export Enforcement Coordination Center (E2C2).

U.S. and multinational companies have none of these resources; they must rely upon screening tools that have become immediately outdated and inadequate (see Q46 in BIS' FAQs) and enter new vendor relationships to document their enhanced due diligence and compliance efforts. New screening tools are still under development and have not been fully tested or vetted. Disparities in outputs of these resources will result in inconsistent compliance guidance and create confusion in the marketplace. These resources will only degrade over time as companies diversify their ownership structures. The absence of an

[1] The SDNs implicated by Part 744.8 are drawn from fifteen different sanctions programs managed by the Office of Foreign Assets Control (OFAC).

[2] D.2(c) of the Rule states that minority ownership may also trigger the need for additional due diligence, analysis and judgement to assess risks resulting from shared management employees, shared IT systems and other indicators of influence.

unambiguous positive list of restricted parties is bound to yield disparate outcomes and will make the task of compliance massively more difficult and varied in quality and direction, based on different information and calculations.

Corporate ownership information is highly variable, depending on the availability of records and whether it can be accessed by foreign parties or used to support a license application. The reliability of business records is equally tenuous, particularly in countries where jurisdiction over such information may be at the local level. The exfiltration of business records, including ownership records, to support a due diligence analysis or export license application can be problematic and expose U.S. persons to additional legal liability in foreign jurisdictions. Such situations threaten to disrupt years of capital investment, joint research and development and co-production, and destabilize global supply chains.

New standards that conflict with other policy objectives and require further clarity
The Affiliates Rule applies a strict liability standard to ownership determinations. This new Rule also removes the long standing "legally distinct" standard for determining the applicability of Entity List restrictions and compliance requirements. Taken together, these novel requirements shift compliance burden to U.S. and multinational companies with virtually no room for error.

The Affiliates Rule also introduces the "rule of most restrictiveness." This standard conflicts with BIS's stated policy objective in that rule and further undermines US competitiveness and the White House's overarching "America First" policies. BIS should amend the rule so that restrictions and license requirements imposed on listed companies for specific reasons do not flow down to unlisted entities that are not similarly situated to their listed affiliated companies. BIS can accomplish this by amending the Affiliates Rule to carve out an unlisted affiliate that is not engaging in the same alleged conduct as its listed affiliate and ~~that~~ which there are no other facts to support a risk of diversion.

Specifically, the Affiliates Rules state that when an unlisted entity is owned 50% or more by multiple Listed parties, exporters must apply the most restrictive license requirements or restrictions (see e.g., Affiliate Rule IFR at page 9). BIS provides a couple of examples to illustrate the application of the "rule of most restrictiveness." In the second example, "Company G" is owned by two other companies that are on the Entity List that have footnote designations. BIS confirms that such an unlisted company would be subject to the Entity List FDP requirements, even when only one of the owners meets the end-user criteria under paragraph (e) of § 734.9 (Foreign-Direct Product (FDP) Rules).

BIS has previously stated that Entity List FDP requirements are imposed due to a heightened concern about the specific entity. For example, in FR 2024-28267 (published in December 2024), BIS explained that it imposed Footnote 5 FDP restrictions on several entities due to a significant risk of becoming involved in the development or production of "advanced-node ICs." Under the "rule of most restrictiveness" in the Affiliates Rule, an unlisted entity that is owned 50 percent or more by a Footnote 5 company would be subject to heightened restrictions and stricter

licensing policy (presumption of denial) even if it is not engaged in development or production of advanced-node ICs, nor likely to do so. This results in restrictions/license policies being imposed on an unlisted entity that do not align with the stated policy objective. This, in turn, means that any licenses submitted for such an entity would be subject to a presumption of denial even if they are not developing or producing advanced-node ICs.

Industry understands the need to address overlapping license requirements and/or restrictions when multiple lists are being used as the basis for determining compliance obligations. Further, there is a point of fundamental fairness. These parties, by definition, do not appear on any publicly available government list. Applying the most expansive FDP rules to these parties risks multiple situations in which companies will not even realize that their item may be subject to US jurisdiction.

It is currently unclear if the "rule of most restrictiveness" applies to listed entities. We do not believe this is the intent of the Affiliates Rule, but further clarity is needed so that the application of the rule across the industry is consistent. For example, unlisted Company C is majority owned by Company B, which is on the Entity List with no Footnote designations. Company B is majority owned by Company A, which is also on the Entity List with a Footnote 5 designation. While the Interim Final Rule makes clear that the "rule of most restrictiveness" would apply the Footnote 5 restrictions on Company C, the rule could also be read to apply the Footnote 5 restrictions to Company B, which is already on the Entity List. Specifically, the amendment to 744.11 adds paragraph (a)(1), which states, in relevant part, that "Entity List entries extend to other foreign affiliates of listed entities owned 50 percent or more by one or more listed entities or unlisted entities that are subject to ownership related restrictions." (emphasis added). Based on this language and the "rule of most restrictiveness," the Interim Final Rule could be interpreted to unnecessarily apply more restrictive requirements on companies that are already designated on a restricted government list, as illustrated by the above example. This interpretation is inconsistent with the preamble of the Interim Final Rule, which states that the Rule is intended to address BIS's concern that the old "legally distinct" standard can "enable diversionary schemes, such as the creation of new foreign companies to evade Entity List restrictions." (see IFR at page 4). Indeed, in a scenario where there are multiple Entity List parties in the ownership chain, the risk of diversionary schemes to evade Entity List restrictions is mitigated because both entities are on the Entity List.

Licensing burden

We understand that BIS anticipates that this Rule will generate only approximately 250 new export license applications a year. NFTC believes this to be a substantial under-estimate due to changes in expectations for the applicable knowledge standard as well as the requirement to treat, in some cases, even partial ownership as if the party were owned more than 50% by entities covered by this Rule. Removing the "legally distinct" treatment of affiliates of Entity List parties will directly increase the number of export license applications to BIS by significantly expanding the scope, impact and compliance obligations of Entity List designations.

We seek data confirming BIS' capacity to process surges in license applications in a timely manner, particularly in light of corporate due diligence efforts using available open source tools that have been unable to confirm ownership information of a potential customer or recipient of U.S.-origin items subject to the EAR, resulting in higher than anticipated license applications.

We understand that BIS already has a backlog of export license applications, particularly for items destined for China. The impact of this Rule on existing and new transactions with Chinese parties worldwide is exceptionally severe. We note with concern that Chinese parties comprise a disproportionate number of Entity List designations; they are also the only parties designated on the MEU List. The complex nature of Chinese state-owned and state-supported enterprises results in even companies with the most tenuous or innocuous relationships potentially becoming captured by the Rule.

In cases where a non-listed entity is owned by more than one restricted party, the "highest restriction" applies. Thus, if an Entity List designee and a Military End-User together own more than 50% of an unlisted party, then the Entity List restrictions will apply regardless of the ownership percentage of each separate party. We anticipate an increase in license applications to address this and similar situations and again stress the need for adequate resources and a commitment to processing new export license applications in a timely and more efficient fashion that has been the case in the recent period.

Red Flag #29

U.S. exporters and reexporters must make every effort to resolve the ownership status of all counterparties. The inability to do so triggers a requirement to seek BIS authorization to move forward with a transaction. A conservative reading of RF #29, when combined with the strict liability provision, requires companies to rescreen customers prior to every shipment, thus creating the "knowledge" that ownership did not change in between transactions – an unnecessary but unavoidable requirement that stifles U.S. competitiveness in the global marketplace. This element of the Rule is draconian, imposes unnecessary and significant risk on all U.S. exporters, and risks becoming a significant chilling factor on U.S. exports.

Loss of global market share

The previous Administration deployed overbroad and far-reaching export controls and expanded bureaucratic structures and regulatory burdens on industry, while at the same time putting U.S. global technology leadership at risk, as these countries' companies can continue to do business with Listed Parties. Yet, under standards such as the "rule of most restrictiveness," U.S. industry will be automatically subject to a stringent licensing denial policy by application of this rule. This Rule risks accelerating those trends on a much greater scale and ultimately undermines the Administration's "America First" policy because US companies will be unable to compete and their market share and ability to reinvest in American technological leadership and manufacturing will be significantly degraded. For the rest of the world, the solution is clear: abandon your American suppliers or face persistent uncertainty. Over time, the world will gravitate away from American companies because this

rule poisons the well. It is far easier to partner with a non-American supplier that is not beholden to these draconian ownership requirements.

This Rule further exacerbates gaps in export control regulations, where foreign availability supplants U.S. products when they are blocked. Even EAR99 products are blocked when an end-user is added to the Entity List and in many cases, including in U.S.-led software products, foreign products, not subject to jurisdiction, quickly pick up the business. While the issue has been present with the prior end-use/end-user restrictions since 2018, such as the Entity List, the issue is multiplied when the number of restricted parties is expanded, such as through this Affiliates Rule. BIS must address these gaps to avoid further disadvantaging American technology as it continues to address national security concerns.

Recommendations

1) Postpone the effective date of this Rule for at least 120 days, retroactive to September 29, to enable companies to:
    a. Conduct necessary risk assessments,
    b. Analyze existing business relationships and either seek authorization to continue or wind down transactions already underway,
    c. Establish uniform procedures to screen, assess and determine the applicability of this Rule to future transactions.

    Delaying the effective date of this Rule will also afford the Administration time to have meaningful engagement with industry, including consideration of public comments, particularly around unintended impacts.
2) Suspend enforcement action for one year to ensure a level playing field for the export community to develop more consistent and reliable protocols for reaching determinations about the ownership structure of affiliates.
3) Extend the Temporary General License, currently in effect through November 30, on a rolling basis until the United States secures concrete "no undercut" alignment agreements with allies and close trading partners to ensure that U.S. companies are not unfairly disadvantaged by market shifts in response to this Rule.
4) Publish an "Affiliates Watchlist" of companies that have been identified as affiliates owned 50% or more in the aggregate by Entity List parties, MEUs, or relevant SDNs, including compliance guidance.
5) Establish a "fast-track" export licensing process for lower risk transactions (e.g., exports/reexports involving EAR99, Anti-Terrorism and Regional Stability-controlled items and technologies) to end-users where due diligence has been unable to conclusively determine affiliate status and where previous export history does not indicate diversion concern.
6) Amend the language in 744.11(a)(1) to help clarify how exporters should apply the "rule of most restrictiveness" to scenarios where multiple Entity List parties with different licensing requirements and/or restrictions exist in the ownership chain of an unlisted entity. Specifically, BIS should amend the language in

744.11(a)(1) to state that “Entity List entries extend to other non-listed foreign affiliates of listed entities owned 50% or more by one or more listed entities or unlisted entities that are subject to ownership related restrictions.” The “rule of most restrictiveness” should be tailored to avoid outcomes in which restrictions and licensing policies intended for heightened national security concerns are imposed on entities that do not warrant this treatment.

About NFTC

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment, including maintaining competitiveness and technological leadership. Our membership covers the full spectrum of industrial, commercial, financial, and service activities, accounting for over $6 trillion in revenue and employing nearly six million people in the United States. Thank you for your consideration of our comments. We welcome the opportunity to provide additional information and address any questions you may have. Please contact us at jchu@nftc.org or (703) 225-8519.

Sincerely,

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Vice President, National Security
Policy and Executive Director
Alliance for National Security and
Competitiveness