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Client Alert

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BIS 50 Percent Rule: Starting This Week, Companies Must Research the Ownership of All Foreign Customers

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Overview

On Monday, September 29, the Department of Commerce's Bureau of Industry and Security (BIS) released an interim final rule that adopts a 50 percent ownership standard to extend Export Administration Regulations (EAR) end-user controls to foreign affiliates that are at least 50 percent owned, directly or indirectly and in the aggregate, by:

- Entities on the Entity List
- Entities on the Military End-User (MEU) List
- Certain Specially Designated Nationals (SDNs) covered by EAR § 744.8

This addresses a diversion gap in which legally distinct, unlisted affiliates of listed parties were not automatically covered. This standard aligns with the Department of Treasury's Office of Foreign Assets Control (OFAC) practice.

What Changed

- Entity List expansion: Entity List restrictions now automatically apply to foreign entities that are owned 50 percent or more (directly/indirectly; individually/in aggregate) by one or more Entity List parties and to chains of ownership (e.g., an unlisted parent that is itself captured by the 50 percent rule passes restrictions down to its 50 percent-owned subsidiaries).
- MEU List expansion: The same 50 percent standard applies to MEU List entities for items in Supplement No. 2 to Part 744. No license exceptions are available except narrow "Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station" (GOV) exceptions specified in Section 744.21(c).
- Section 744.8 expansion (SDNs): BIS adopts the 50 percent rule for specified SDN programs; the most-restrictive rule also applies across lists.
- Red Flag 29: The new Know Your Customer (KYC) red flag mandates resolution or licensing when listed ownership is known but percentages cannot be determined.
- Guidance and procedures: The new Supplement No. 8 to Part 744 provides EAR-specific 50 percent ownership guidance; license application instructions have been updated (Supplement No. 2 to Part 748, "Affiliates rule" notation).

Effective Dates and Comment Period

- Effective date: On filing for public inspection (September 29)
- Temporary General License (TGL) validity: Expires 60 days after *Federal Register* publication (scheduled for September 30)
- Comments due: 30 days from filing for public inspection

Compliance Consequences

- Screening implications: The Consolidated Screening List (CSL) will not capture all covered affiliates. Companies must supplement screening with ownership due diligence that includes 50 percent aggregation analysis.
- Strict liability and duty to inquire: Ownership must be determined when you know a listed owner exists and may require licensing; proceeding without resolving ownership creates violations.
- Program alignment: Firms with OFAC 50 percent rule programs can leverage existing processes but must account for EAR-specific elements (e.g., foreign direct product (FDP) rules, deemed exports/reexports, most-restrictive rule across lists).

Key Takeaways

- Automatic coverage: Any foreign entity owned 50 percent or more by one or more listed entities is now subject to the same EAR license requirements and restrictions as its listed owner(s).
- Most-restrictive rule: If multiple listed owners exist (Entity List, MEU List, or Section 744.8 SDNs), the most-restrictive license requirements, exception eligibility, and review policy apply to the affiliate.
- Global scope: Coverage applies worldwide; the CSL will no longer be exhaustive for Entity List controls.
- Affirmative duty (created through so-called Red Flag 29 in the new regulation): If you know a party has listed owners but cannot determine ownership percentages, you must resolve the red flag, obtain a BIS license, or identify a valid license exception before proceeding.
- FDP rules conformed: Entity List and Russia/Belarus-MEU/Procurement FDP rules now expressly capture majority-owned affiliates.
- Exclusions possible: The BIS End User Review Committee (ERC) may exclude specific affiliates on a case-by-case basis via entry modifications.

Action Items for Companies

- Map ownership: Update screening/due diligence to identify direct and indirect ownership chains and aggregate holdings by listed parties to 50 percent.
- Enhance KYC: Incorporate Red Flag 29 workflows; define escalation paths when ownership cannot be verified; document diligence.
- Update controls: Adjust enterprise resource planning/trade compliance rules to apply the most-restrictive standard across Entity List, MEU, and Section 744.8 SDN coverage; include FDP triggers.
- Review pipelines: Assess current and pending transactions for captured affiliates; determine applicability of the TGL; identify items requiring immediate licensing.
- Train teams: Brief sales, logistics, procurement, engineering (deemed exports), and finance on the new coverage and affirmative duties.
- Consider exclusions/licensing: Where appropriate, pursue exclusion requests and prepare robust license applications with ownership evidence.
- Vendor management: Confirm third-party screening providers can perform 50 percent aggregation and indirect ownership analysis beyond CSL name matches.

We can help—our team advises on ownership diligence, risk assessments, application of the most-restrictive standard, FDP scoping, license strategy, TGL utilization, and exclusion requests. Contact us to triage transactions under the new BIS 50 percent rule and to update your compliance program.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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