



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 736, 744, and 748

[Docket No. 250509-0083]

RIN 0694-AK11

Expansion of End-User Controls to Cover Affiliates of Certain Listed Entities

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Interim final rule.

SUMMARY: In this interim final rule (IFR), the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to address diversion concerns involving entities on the Entity List and certain other restricted end users. Under this IFR, any entity that is at least 50 percent owned by one or more entities on the Entity List will itself automatically be subject to Entity List restrictions. This is a marked improvement over the current standard, which excludes all entities that are not specifically included on the Entity List, regardless of affiliation with Entity List entities. This IFR similarly applies restrictions to entities at least 50 percent owned by listed ‘military end users’ and certain sanctioned parties. The 50 percent ownership standard in this IFR is designed to be consistent with longstanding Department of the Treasury practice, so as to limit the additional burden on the business community.

DATES:

- *Effective date:* This rule is effective [INSERT DATE OF FILING FOR PUBLIC INSPECTION].
- *Modification request date:* Non-listed foreign affiliates of listed entities, regardless of the foreign country where they are located, that are subject to restrictions under the Affiliates rule based on ownership by an Entity List party or Military End User may request

modification of the relevant entry following the process in § 744.16(e) or § 744.21(b)(2) at any time on or after [INSERT DATE OF FILING FOR PUBLIC INSPECTION].

Temporary General License (TGL) validity date. General Order No. 7, TGL—Non-listed foreign affiliates of listed entities, which permits certain export, reexport, and transfer (in-country) transactions involving non-listed 50-percent or more owned foreign affiliates of parties on the Entity List or Military End-User List, as specified in supplement no. 1 to part 736 under paragraph (g). This TGL expires on [INSERT DATE 60 DAYS AFTER DATE OF FILING FOR PUBLIC INSPECTION].

- *Comment date:* Comments must be received by BIS no later than [INSERT DATE 30 DAYS FROM DATE OF FILING FOR PUBLIC INSPECTION].

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal at: www.regulations.gov. The regulations.gov ID for this rule is: BIS-2025-0017. Please refer to RIN 0694-AK11 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a non-confidential version of the submission.

For comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL” on the top of that page. The corresponding non-confidential version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” Any submissions with file names that do not begin with either a “BC” or a “P” will be assumed to be public and will be made publicly available at: <https://www.regulations.gov>. Commenters submitting business confidential information are

encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Entity List

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730-774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11. The EAR impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the “License Review Policy” column on the Entity List, and the impact on the availability of license exceptions is described in the relevant *Federal Register* rule that added the entity to the Entity List. BIS places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), Defense, Energy, State and, where appropriate, the Treasury,

generally makes decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes decisions to add an entry to the Entity List by majority vote and makes decisions to remove or modify an entry by unanimous vote.

B. Scope of entries listed on the Entity List.

1. Entity List legally distinct standard.

Prior to this IFR, BIS used a ‘legally distinct’ standard for applying restrictions to subsidiaries and other foreign affiliates of entities identified on the Entity List. Under this standard, Entity List restrictions for listed entities have extended to the foreign entity listed on the Entity List, as well as any related foreign entity located in that same country that is not legally distinct from the listed foreign entity. For example, a branch of a listed entity, even if operating under a different name, was considered to be subject to Entity List restrictions, because the branch is not legally distinct from the listed entity. Conversely, the Entity List requirements for a listed entity did not extend to a foreign affiliate owned by a listed entity that was legally distinct from the listed entity, unless BIS separately listed that legally distinct foreign affiliate on the Entity List.

BIS is concerned that the old approach can enable diversionary schemes, such as the creation of new foreign companies to evade Entity List restrictions. Creation of such companies may allow listed entities to deceive exporters, reexporters, and transferors into providing items in violation of the Entity List restrictions that apply to the listed entities. Furthermore, the old approach required BIS to expend substantial efforts to address the tactics that listed entities would adopt to circumvent their placement on the Entity List. BIS frequently published additional final rules to identify legally distinct foreign affiliates of listed entities that also warranted being listed on the Entity List. Even with these additions, there remained a risk that entities would create additional non-listed foreign companies to try to circumvent the intent of the controls. The creation of such new foreign companies would in turn require BIS to devote

significant additional time and resources to issuing rules adding them to the Entity List. With this IFR, BIS is reducing future piecemeal regulatory activity to expand Entity List restrictions.

Because of such diversion concerns, BIS has determined that to protect U.S. national security and foreign policy interests, the Entity List restrictions should also extend to certain foreign companies that are subsidiaries or other foreign affiliates owned by listed entities.

2. The 50 percent ownership rule.

The Department of the Treasury's Office of Foreign Assets Control (OFAC) uses a 50 percent ownership rule in connection with the Specially Designed Nationals and Blocked Persons List (SDN List) and may also apply the 50 percent rule when issuing other sanctions prohibitions, including less than full blocking restrictions. Sanctions maintained by OFAC prohibit all transactions by U.S. persons, wherever they are located, or within (or transiting) the United States that involve any property or interests in property of designated or otherwise blocked persons, unless authorized by a general or specific license issued by OFAC or exempt under OFAC's regulations. All property and interests in property of blocked persons that are in the United States or in the possession or control of U.S. persons may not be transferred or otherwise dealt in and must be reported to OFAC. Under the 50 percent rule, entities which are owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more blocked persons are generally considered blocked, regardless of whether such entities are specifically added to the SDN List.

OFAC's 50 percent rule addresses, among other objectives, threats of circumvention through unlisted subsidiaries while reducing the administrative burden associated with adding subsidiaries to the SDN List. Similar to OFAC, BIS in this IFR is applying the 50 percent rule under the EAR to address diversionary/circumvention tactics/risks (as described in section I.B.1) and address interest in reducing administrative burdens. BIS has determined that applying the 50 percent rule under the EAR (which BIS refers to as the Affiliates rule) will reduce the need to publish additional final rules to add entities to the Entity List and more broadly and effectively

impose license requirements for exports, reexports, and transfers (in-country) to or involving entities that pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States.

BIS recognizes that its own application of the Affiliates rule may require additional analysis by the private sector (*e.g.*, exporters, reexporters, or transferors) in order to comply. The private sector should already be undertaking this analysis as part of a risk-based approach under OFAC prohibitions to reduce their risk of liability for dealings with blocked persons who are subject to OFAC's 50 percent rule. BIS anticipates that this experience in complying with OFAC's 50 percent rule should ease the transition for parties in complying with the requirements that this IFR adds to the EAR by adopting an Affiliates rule. Applying the Affiliates rule may take more time and compliance resources compared to simply screening a list for identified names, especially in situations where limited information on corporate ownership structures is publicly available, such as where a listed entity is privately held. Adopting the Affiliates rule will also mean that the Consolidated Screening List (CSL) will no longer comprise an exhaustive listing of foreign entities subject to Entity List license requirements, because the CSL will only include the entities listed on the Entity List and will not reflect these additional foreign affiliates of listed entities that are owned 50 percent or more by one or more listed entities.

There are various private sector screening resources for companies that may help to mitigate this challenge, including vendors that conduct 50 percent ownership analysis already as part of their OFAC compliance screening programs. OFAC also provides guidance regarding certain entities that may be blocked pursuant to the 50 percent rule to facilitate compliance, though this does not replace the need for independent compliance screening or due diligence. BIS may follow OFAC's practice of providing guidance regarding certain entities that may be subject to the Affiliates rule to facilitate compliance. To further support compliance, BIS may in certain circumstances add those additional entities to the Entity List.

3. Protecting U.S. national security and foreign policy interests necessitates adoption of

the Affiliates rule, or a stricter rule, for the Entity List.

The Entity List has increasingly become a vital tool to protect U.S. national security and foreign policy interests. The Entity List was originally added to the EAR on February 3, 1997, to address nuclear proliferation concerns (62 FR 4910). The scope of the Entity List has been broadened over the years, *e.g.*, with the addition of § 744.11 (establishing listing criteria and related procedures) and certain Entity List Foreign Direct Product (FDP) rules (§ 734.9(e) and (g)), to better take into account all entities that may be involved in activities that are contrary to U.S. national security or foreign policy interests. BIS, in consultation with the Departments of Defense, Energy, State, and the Treasury, has determined that the legally distinct standard, which also relied on exporters, reexporters, and transferors practicing sufficient due diligence when dealing with legally distinct entities that were foreign affiliates of listed entities, is not sufficient to adequately protect U.S. national security or foreign policy interests. In order for Entity List restrictions to effectively protect U.S. national security and foreign policy interests, the restrictions must also extend to foreign affiliates that are owned, directly or indirectly, by one or more listed entities to prevent diversion to listed entities of concern.

BIS, in consultation with the Departments of Defense, Energy, State, and the Treasury, is adopting for the Entity List the 50 percent rule that OFAC has used for many years for the SDN List, which for EAR purposes will be referred to as the Affiliates rule. Adopting the same standard that exporters, reexporters, and transferors have already been using in their OFAC compliance programs will likely ease the burden in adopting the new standard for Entity List compliance, as compared with a distinct standard that applies a lower ownership threshold. Additionally, this IFR does not constrain the ERC's ability to add an affiliated entity that is under the 50 percent threshold when the ERC has reasonable cause to believe, based on specific and articulable facts, that the foreign entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). Even so, BIS welcomes comments on

whether the 50 percent ownership threshold should be lower.

For the same reasons as noted above, BIS, in consultation with the Departments of Defense, Energy, State, and the Treasury, is also adopting the Affiliates rule at this time for the ‘Military End-User’ (MEU) List in supplement no. 7 to part 744. Extending the Affiliates rule to the MEU List is consistent with prior BIS proposals to align the MEU List and the Entity List, including by potentially merging the two lists and expanding license requirements for MEUs, that are under review (see the July 29, 2024 proposed rule, *End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users*, 89 FR 60985). BIS is also adopting the Affiliates rule for § 744.8 (Restrictions on exports, reexports, and transfers (in-country) when certain persons designated on the SDN List are a party to the transaction) to better prevent diversion and to align more closely EAR restrictions with corresponding OFAC restrictions that apply to persons designated as SDNs under the authorities specified in § 744.8.

BIS is also informing the public that foreign parties with significant minority ownership by, or other significant ties to (*e.g.*, overlapping board membership or other indicia of control), an Entity List entity, an MEU List entity, or an SDN subject to § 744.8(a)(1) present a Red Flag of potential diversion risk to the listed entity. In this type of situation, additional due diligence is necessary, especially given the opaque ownership structures and limited access to accurate ownership data in certain jurisdictions. In addition, BIS has added a Red Flag to supplement no. 3 to part 732 to indicate that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or the MEU List, it must resolve the Red Flag prior to proceeding with any exports, reexports, or transfers (in-country) to the foreign entity, submit a license application to BIS, or identify an available license exception based on the restrictions applicable to the listed party. There are not many EAR license exceptions available, but for certain listed entities, there are narrowly specified EAR license exceptions that may be available. For example, JSC Integral,

a company that is involved with the International Space Station (ISS), is listed on the Entity List, so the Affiliates rule would apply to a foreign entity that is owned 50 percent or more by this listed entity. The license requirement for JSC Integral may be overcome by License Exception GOV under § 740.11(b)(2) and (e). For example, provided the export meets all of the requirements of License Exception GOV under § 740.11(b)(2) and is not otherwise restricted under any of the general restrictions on the use of license exceptions under § 740.2, exporters could rely on this license exception authorization for an export to a foreign entity that is owned 50 percent or more by the listed entity JSC Integral. When an unlisted entity is owned 50 percent or more by multiple Entity List parties, and only one such owner is eligible for a license exception, that license exception will not apply to transactions involving the unlisted entity, because BIS will apply the most restrictive license requirements to the unlisted entity.

Exporters, reexporters, and transferors are responsible for compliance with the BIS Affiliates rule and can be held liable for unauthorized exports, reexports, or transfers (in-country) on a strict liability basis, so due diligence must be conducted to determine whether a foreign entity is an entity that is owned by one or more listed entities. The application of the Affiliates rule creates an affirmative duty to determine the ownership of other parties to the transaction in order to comply. As with any export transaction, other parties, *e.g.*, freight forwarders and financial institutions, may also have compliance obligations; BIS maintains guidance applicable to these parties that may be of assistance in ensuring that their compliance programs appropriately take export control restrictions into account.

BIS is not adopting the Affiliates rule at this time for certain other EAR restricted parties list or provisions, specifically, the Unverified List (UVL) in supplement no. 6 to part 744, or the list of parties subject to Denial Orders issued under part 764. Extending the Affiliates rule to UVL entities is not warranted because subsidiaries or other foreign affiliates of these listed entities may not meet the standard set forth in § 744.15, that is receipt of items subject to the EAR with respect to which BIS could not conduct a successful end-use check for reasons that are

outside of the U.S. government's control. BIS is also not extending the Affiliates rule to persons subject to Denial Orders as there is a separate related persons process under § 766.23 pursuant to which BIS provides persons with notice of contemplated action and an opportunity to respond. BIS welcomes public comments in response to this IFR on whether BIS should extend the Affiliates rule to these other EAR end-user lists, as well as on any other aspect of this IFR.

C. Extending the Entity List Requirements

As discussed above, BIS, in consultation with the Departments of Defense, Energy, State, and the Treasury, has determined the existing Entity List restrictions for all existing entries on the Entity List, including any new entities that will be added to the Entity List in future rulemakings, extend to any foreign entity that is owned by 50 percent or more by one or more listed entities. The ERC may apply exceptions to the Affiliates rule on a case-by-case basis if it determines that the foreign affiliates owned by a particular listed entity, or one specific foreign entity owned by a listed entity, do not pose a significant risk of being or becoming involved in diversion to the listed entity by approving additions or modifications to the Entity List. These exclusions will be identified by specifying in the relevant entry on the Entity List or MEU List that the Affiliates rule does not apply to any foreign affiliate owned by a particular listed entity or that a specific foreign affiliate is excluded. The ERC will make determinations regarding the applicability of these exceptions in accordance with the procedures set forth in supplement no. 5 to part 744 of the EAR. Any foreign entity that is subject to restrictions based upon direct or indirect ownership by one or more listed entities may request such an exclusion through a request to modify the relevant Entity List entry or entries pursuant to the procedures identified in § 744.16 (Entity List) under paragraph (e).

D. Overview of this IFR.

To effectuate the changes described above, in particular, adopting the Affiliates rule, BIS is amending part 744, as well as making conforming changes to parts 732, 734, 736, and 748 of

the EAR (15 CFR parts 730-744). The four sets of changes this IFR makes are described in section II as follows:

1. Adoption of the Affiliates rule for the Entity List;
2. Adoption of the Affiliates rule for the MEU List;
3. Adoption of the Affiliates rule for § 744.8; and
4. Other conforming changes.

II. Amendments to the EAR

A. Adoption of the Affiliates rule for the Entity List changes.

1. Revision to introductory text of Entity List.

This IFR amends the Entity List in supplement no. 4 to part 744, by revising the introductory text to the supplement. This IFR adds a new fourth sentence to specify that the Entity List license requirements and other Entity List restrictions also apply to any foreign entity that is owned 50 percent or more by one or more listed entities or entities that are subject to restrictions based upon their ownership. This IFR adds a new fifth sentence to specify the rule of most restrictiveness, which as used in §§ 744.8, 744.11, 744.21, and supplements nos. 4, 7, and 8 to part 744 of the EAR, means an entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. This IFR also adds a new sixth sentence to specify that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve new Red Flag 29, obtain a license from BIS, or identify an applicable license exception prior to proceeding with the export, reexport, or transfer (in-country) and includes a cross reference to new Red Flag 29 in supplement no. 3 to part 732 that this IFR adds.

Lastly, this IFR adds the phrase “and other Entity List restrictions” after the reference to “license requirements” in the first sentence of the introductory text to clarify that listed entities are subject to restrictions on license exception availability and the license review policy stated in the listing, as well as the indicated license requirements.

2. Revision to § 744.11 to adopt Affiliates rule for the Entity List.

In § 744.11 (License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States), this IFR adds paragraph (a)(1) (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) to specify that the Entity List license requirements and other Entity List restrictions also apply to any foreign entity that is owned, directly or indirectly, individually or in the aggregate, 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership. This revision is made because of the diversion concern to listed entities. Paragraph (a) specifies the rule of most restrictiveness, as described under section II.A.1 of this IFR also applies to the Entity List. Paragraph (a)(1) also specifies that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities on the Entity List, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available. Paragraph (a)(1) also includes a cross reference to new Red Flag 29 that this IFR adds to supplement no. 3 to part 732. Lastly, paragraph (a)(1) also specifies that the Entity List license requirements and other Entity List restrictions do not apply to foreign affiliates of listed entities that are owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities that are operating at an address listed on the Entity List if the entities operating at that address are not specifically identified on the Entity List. BIS notes that these addresses pose diversion concerns

such as through the operation of corporate secretarial services companies or logistics companies associated with high volumes of diversion, but that entities located at a different address with a parent company registered at a corporate services address on the Entity List may not present the same diversion risks.

For any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities with different Entity List license requirements, the most restrictive of those Entity List license requirements apply to that foreign entity. For any foreign entity that is an entity owned, directly or indirectly, by a listed entity where ownership percentage cannot be determined, the most restrictive Entity List license requirements applicable to the listed entity apply to that foreign entity. If BIS is able to make a determination during the license review process that the foreign entity is in fact not owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, the license application will be returned without action to the applicant noting that a license is not required. In such cases, BIS may consider issuing guidance, as appropriate, in the form of a frequently asked question on the BIS website to advise other exporters of such determination.

Application example 1:

- Company A is listed on the Entity List and requires a license for all items subject to the EAR and has a presumption of denial license review policy. Company A owns 35 percent of Company C. Company C is not listed on the Entity List.
- Company B is listed on the Entity List and requires a license for any item on the CCL and has a case-by-case license review policy. Company B owns 15 percent of Company C.
- Company C is owned directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities (*i.e.*, Company A and B in this example). The

Entity List license requirements that are applicable to Company C are the same as if the item was being exported, reexported, or transferred (in-country) to the owners listed on the Entity List. Because the Entity License requirements and license review policy is more restrictive for Company A, the Entity List license requirements and license review policy for Company A would be followed for any transaction where Company C is a party to the transaction. Also note that the breakdown of the percentages adding up to 50 percent or more does not matter (*e.g.*, in this hypothetical, it would not matter if Company B held 35 percent and Company A held 15 percent—Company A’s requirements would still apply).

- Company D is owned 50 percent by Company C. Because Company D is owned, directly or indirectly, individually or in the aggregate, 50 percent or more by an unlisted entity (Company C) that is subject to Entity List license requirements or other Entity List restrictions based upon its ownership, the Entity List license requirements that are applicable to Company D are the same as if the item was being exported, reexported, or transferred (in-country) to its owner(s) listed on the Entity List. Assuming Company D has no direct or indirect ownership by other listed parties that are subject to more restrictive license requirements and other restrictions, the Entity List license requirements and license review policy for Company C would be followed for any transaction where Company D is a party to the transaction.

BIS estimates that these changes described in section II.A.1 and .2 will result in an additional 170 license applications submitted to BIS annually.

3. Conforming changes in § 734.9 for FDP rules for entities on the Entity List

In § 734.9 (Foreign-Direct Product (FDP) Rules), this IFR as a conforming change adds three sentences to the end of paragraph (e) (Entity List FDP rules), to specify that consistent with

the revised introductory text to the Entity List (see supp. no. 4 to part 744), the end-user scope of the Entity List FDP rules includes any foreign entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity within the end-user scope of the provision. This IFR adds a second sentence to specify that these requirements apply to all entities on the Entity List with a footnote referenced under this paragraph (e). This IFR adds a final sentence stating that if the foreign entity is owned 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity within the end-user scope, these Entity List FDP requirements are applicable, even when only one of the owners meets the end-user criteria under paragraph (e).

For the same reason, this IFR adds two sentences to the end of paragraph (g) to specify that consistent with the revised introductory text to the Entity List in supplement no. 4 to part 744, the end-user scope of the Russia/Belarus-Military End User and Procurement FDP rule also includes any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity that meets the end-user scope of paragraph (g). As in paragraph (e), this IFR adds an additional sentence to the end of paragraph (g) to provide application guidance for these criteria.

Application example 2 for FDP application:

- Company E is listed on the Entity List with a footnote 3 designation, which means foreign-produced items that meet the criteria in § 734.9(g) (Russia/Belarus-Military End User and Procurement FDP rule) are subject to the EAR and require a license to this entity. Company E owns 35 percent of Company G.

- Company F is listed on the Entity List with a footnote 1 designation, which means foreign-produced items that meet the criteria in § 734.9(e)(1) (*Entity List FDP rule: Footnote 1*) are subject to the EAR and require a license to this entity. Company F owns 15 percent of Company G.
- Company G is owned directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities (*i.e.*, Company E and F in this example), the Entity List license requirements and other requirements are applicable the same as if the item was being exported, exported from abroad, reexported, or transferred (in-country) to the owners of Company G listed on the Entity List. Similar to Application example 1, under this Application example 2, the breakdown of the percentages adding up to 50 percent or more does not matter (*e.g.*, in this hypothetical, it would not matter if Company F held 35 percent and Company E held 15 percent—Company F’s requirements would still apply), although in determining the scope of foreign-produced items subject to the EAR, the criteria for both Company E and F would be used.
- In determining the scope of foreign-produced items subject to the EAR that require a license to Company G, both the criteria under §§ 734.9(e)(1) and (g) (*i.e.*, the requirements for both Company E and Company F) would be used for determining which items required a license based on the Entity List license requirements.

BIS estimates that these changes to § 734.9 will result in an additional five license applications submitted to BIS annually.

4. Requests for removal of Entity List license requirements for any foreign affiliate of a listed entity that is subject to Entity List license requirements based on direct or indirect ownership by one or more entities listed on the Entity List.

In § 744.16 (Entity List) this IFR revises paragraph (e) (Removal or modification requests) to add a new second sentence to specify that any foreign entity that is owned, directly

or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the Entity List or by entities subject to Entity List license requirements or other Entity List restrictions based upon their ownership, may request that its Entity List owner's entry listing be modified to exclude the requester.

BIS estimates that these changes to § 744.16(e) will result in an additional 30 appeals submitted to BIS annually.

5. Addition of guidance for applying for license applications that include a party to the transaction that is at least 50 percent owned by an Entity List entity, 'military end users,' or certain SDNs.

In § 748.8 (Unique application and submission requirements), this IFR adds a new paragraph (a)(a) to reference a new paragraph (c)(c) (Affiliates rule entities) added to supplement no. 2 to part 748—Unique Application and Submission Requirements. New paragraph (c)(c) specifies that in order to request a license for an export, reexport, or transfer (in-country) for any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the Entity List in supplement no. 4 to part 744, MEU List in supplement no. 7 to part 744, or by one or more SDNs designated under programs listed in § 744.8(a)(1), or for an export, reexport, or transfer (in-country) when the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or the MEU List, the license applicant must specify "Affiliates rule" in Block 9 (Special Purpose) of the BIS-748P "Multipurpose Application" form. This IFR also specifies that for license applications when the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or the MEU List, the license application must specify the names of the listed party or parties that own that entity, which also must include explaining the due diligence conducted to determine the percentage of ownership, including providing an explanation for why percentage of ownership was not able to be

determined. In addition, this new paragraph (c)(c) in supplement no. 2 to part 748 specifies that the applicant must specify the names of the listed party or parties that own, individually or in the aggregate, 50 percent or more, directly or indirectly, of that entity(ies) listed on the license application, including identifying the percentage of ownership by listed parties and identifying the method that the applicant used to make that determination. The inclusion of this information as part of a license application, will assist BIS in identifying why the license application was submitted and in evaluating potential diversion concerns.

BIS estimates that this addition of paragraph (c)(c) to supplement no. 2 to part 748 and the addition of § 748.8(a)(a) will not result in any additional license applications submitted to BIS annually because these two new paragraphs are limited to providing guidance on how to submit such license applications. The overall annual increase in license applications associated with this IFR has already been estimated and accounted for elsewhere in this IFR.

B. Adoption of the Affiliates rule for the MEU List changes.

1. Revision to the introductory text of the MEU List.

This IFR amends the MEU List in supplement no. 7 to part 744, by revising the introductory text to add a new fourth sentence to specify that the MEU List license requirements and other MEU restrictions also apply to any foreign entity that is owned 50 percent or more by one or more listed entities or entities that are subject to restrictions based upon their ownership. This IFR adds a new fifth sentence to specify that the rule of most restrictiveness, as described under section II.A.1 of this IFR, also applies to the MEU List. This IFR also adds a new sixth sentence to specify that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available.

2. Revision to § 744.21 to adopt the Affiliates rule for the MEU List.

In § 744.21 (Restrictions on certain ‘military end uses’ or ‘military end users’), this IFR adds paragraph (a)(3) to specify that the MEU List and Entity List license requirements in § 744.21(a)(1) and (2) also apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or entities subject to Entity List or MEU List restrictions based upon their ownership. Paragraph (a)(3) specifies the rule of most restrictiveness, as described under section II.A.1 of this IFR, also applies to the MEU List. Paragraph (a)(3) also specifies that if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign affiliate that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available. Paragraph (a)(3) also includes a cross reference to new Red Flag 29 that this IFR adds to supplement no. 3 to part 732. For any foreign affiliate that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities with different MEU List or Entity List license requirements, the most restrictive MEU List or Entity List license requirements apply to that foreign entity. For any foreign entity where the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must submit a license application to BIS.

Paragraph (a)(3) further specifies that the license requirements in paragraphs (a)(1) and (2) do not apply to unlisted foreign affiliates that are owned, directly or indirectly, individually or in the aggregate, solely by one or more unlisted ‘military end users,’ unless the unlisted foreign affiliate itself meets the definition of a ‘military end user.’ BIS has included this text to clarify that the affiliates rule does not extend the license requirements of § 744.21 to unlisted foreign affiliates when there is no direct or indirect ownership by a listed MEU or Entity Listed party with a footnote 3 designation.

BIS estimates that these changes described in section II.B.1 and .2 will result in an additional 30 license applications submitted to BIS annually.

3. Requests for removal of MEU license requirements for any foreign affiliate of a listed entity that is subject to MEU license requirements based on direct or indirect ownership by one or more entities listed on the MEU List and Entity List.

In § 744.21, this IFR also revises paragraph (b)(2) (Requests for removal from or modification of ‘Military End User’ (MEU) List and Entity List) introductory text, to specify that any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the MEU List or the Entity List or subject to MEU List or Entity List restrictions based upon their ownership, may request that its MEU List or Entity List owner’s entry listing be modified to exclude the requester.

BIS estimates that these changes to § 744.21(b)(2) will result in an additional 5 appeals submitted to BIS annually.

C. Revisions to § 744.8.

1. Background on SDN List and EAR requirements under § 744.8.

The U.S. Government has a number of list-based tools to restrict economic activities of individuals and entities to protect U.S. national security or foreign policy interests. BIS employs end-user controls under the EAR, including the Entity List, to impose license requirements for the export, reexport, and transfer (in-country) of items subject to the EAR. End-user requirements and Entity List additions allow for the monitoring of items subject to the EAR, including less-sensitive items.

OFAC maintains the SDN List to identify persons whose property or interests in property that are within the United States or in the possession or control of U.S. persons, wherever located, are blocked (see appendix A to 31 CFR chapter V and <https://www.treas.gov/sdn>). These

targeted economic sanctions tools enable the U.S. Government to escalate economic pressure and promote deterrence while mitigating unintended economic effects on the United States and our partners and allies.

Under § 744.8, BIS implements additional EAR license requirements for all items subject to the EAR for all persons blocked under specified OFAC-administered sanctions programs identified under this section. The EAR restrictions under § 744.8 involving these OFAC-administered sanctions programs serve as a force multiplier and complement OFAC's blocking sanctions, which prohibit all transactions by U.S. persons, wherever they are located, or persons within (or transiting) the United States that involve any property or interests in property of designated or blocked persons, unless authorized by a general or specific license issued by OFAC or exempt under OFAC's regulations. The imposition of these EAR license requirements for exports, reexports, and transfers (in-country) allows for the EAR controls to act as a backstop for activities over which OFAC does not exercise jurisdiction, including certain situations involving deemed exports and deemed reexports, and for reexports and transfers (in-country) that would otherwise not involve U.S. persons (*e.g.*, U.S. financial institutions). Notably, the license requirements under § 744.8 allow for controls on items outside the United States, complementing the existing authority in many OFAC programs to impose blocking sanctions on persons, even outside the United States, who materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, SDNs.

2. Adoption of the Affiliates rule for the purposes of § 744.8.

In § 744.8 (Restrictions on exports, reexports, and transfers (in-country) when certain persons designated on the SDN List are a party to the transaction), this IFR revises paragraph (a)(2) to add a new second sentence that specifies that these EAR controls described under this section also apply to any entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more persons blocked under one of the specific programs identified under § 744.8(a)(1), which is needed to address diversion concerns to entities blocked as a result

of these SDN designations. Paragraph (b), which states the licensing requirement applicable when an SDN designated under the programs identified in paragraph (a)(1) is a party to the transaction, is revised to clarify that the same restrictions apply regardless of how a party is blocked (*i.e.*, included on the SDN List or by operation of OFAC's 50 percent rule) by adding ' , or blocked pursuant to,' between 'designated on OFAC's SDN list with' and 'any of the identifiers set forth in paragraph (a)(1).'

These restrictions are consistent with OFAC regulations, but in the event of a discrepancy exporters, reexporters, and transferors must follow the rule stated here. Because of the close relation between OFAC's SDN List and this section, the public asked BIS in 2024 after § 744.8 was added to the EAR in the final rule, "End-User Controls: Imposition of Restrictions on Certain Persons Identified on the List of Specially Designated Nationals and Blocked Persons (SDN List)" published March 21, 2024 (89 FR 20107), whether BIS was using the legally distinct standard or the OFAC 50 percent ownership rule, and BIS provided regulatory guidance to exporters, reexporters, and transferors that BIS was using the legally distinct standard. However, because BIS is now adopting the Affiliates rule for the Entity List and MEU List, BIS has also determined it is warranted to also use the 50 percent ownership standard for the § 744.8 requirements to protect U.S. national security and foreign policy interests and to reflect the close relationship with OFAC for purposes of this section. This IFR also adds a new third sentence that specifies the rule of most restrictiveness, as described under section II.A.1 of this IFR also applies to SDNs listed under one of the specific programs identified under § 744.8(a)(1). As discussed above, this IFR neither constrains the ERC's ability to add a foreign entity that falls below the 50 percent threshold nor to exclude an entity that is owned 50 percent or more by one or more listed entities.

BIS estimates that these changes to § 744.8 will result in an additional 55 license applications submitted to BIS annually.

D. Other conforming changes.

1. Temporary General License (TGL) - Non-Listed Foreign Affiliates of Listed Entities.

In Supplement No. 1 to Part 736—General Orders, this IFR adds a new Temporary General License, Non-listed foreign affiliates of listed entities under paragraph (g). This IFR adds paragraph (g)(1) (Authorization), which specifies that this TGL authorizes: (i) exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 (supplement no. 1 to part 740) when a non-listed foreign entity that is owned 50 percent or more, individually or in aggregate, by one or more listed entities on the Entity List (supplement no. 4 to part 744) or Military End-User (MEU) List (supplement no. 7 to part 744), or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership, is a party to the transaction; and (ii) exports, reexports, or transfers (in-country) to or within any country other than Country Group E:1 or E:2 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in the aggregate, by one or more listed entities on the Entity List or Military End-User (MEU) List, or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership; and such party to the transaction is a joint venture with a non-listed entity headquartered in the United States or Country Group A:5 or A:6 that is not owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or MEU List or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership. This TGL may only be utilized to overcome the license requirements described in §§ 744.11 and 744.21 of the EAR applicable to the non-listed foreign affiliate to which this TGL applies. Paragraph (g)(2) specifies that persons must comply with all provisions of the EAR, including any applicable additional license requirements.

This IFR adds paragraph (g)(3) (Validity date) to specify that this TGL—Non-listed foreign affiliates of listed entities under paragraph (g) expires on [INSERT DATE 60 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

Lastly, this IFR adds paragraph (g)(4) (Recordkeeping requirement) to specify that all exports, reexports, transfers (in-country), and exports from abroad exported, reexported, or transferred (in-country) under the authorization of this TGL are subject to the recordkeeping requirements of part 762 of the EAR.

BIS estimates that these changes described in section II.D.1 will result in a reduction of 10 license applications submitted to BIS in the first year this rule is in effect.

2. Addition of guidelines for applying the Affiliates rule.

This IFR adds Supplement No. 8 to Part 744—Guidelines for Applying Affiliates Rule to Entity List Entries and Other End-User Controls. This new supplement provides similar guidance as is contained in the guidance document from OFAC titled, *Revised Guidance On Foreign Entities Owned By Persons Whose Property And Interests In Property Are Blocked*, from August 13, 2014. However, BIS has made updates to this guidance to make it EAR-specific and to remove references that are only applicable in the OFAC sanctions context. The EAR requirements are not focused on property, but rather on identifying foreign affiliates of listed entities that are of concern to divert items that are subject to the EAR to listed entities because such foreign affiliates are owned 50 percent or more by one or more listed entities or by entities that are subject to restrictions based upon their ownership. The new supplement this IFR adds to the EAR consists of three paragraphs.

Paragraph (a) (Scope) identifies the general scope of these guidelines relating to the status of entities owned by individuals or entities identified on the Entity List, ‘Military End-User’ (MEU) List, or the SDN List under a program identified in § 744.8(a)(1). Paragraph (a) also specifies that this supplement sets forth guidelines with respect to foreign affiliates of listed

entities owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List in supplement no. 4 to this part or the MEU List in supplement no. 7 to part 744, by SDNs designated under programs identified in § 744.8(a)(1), or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership, as well as addressing scenarios when an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity, directly or indirectly, owned by one or more listed entities on the Entity List or the MEU List. These foreign affiliates of listed entities are a diversion concern and therefore the Entity List license requirements and MEU List license requirements and other restrictions also extend to transactions involving these other foreign affiliates of listed entities.

Paragraph (b) (Application of 50 percent ownership rule) provides guidance on how to apply the Affiliates rule, including providing a rationale for why these criteria are used. Paragraph (b) specifies that any foreign entity that is owned 50 percent or more by one or more entities listed on the Entity List or MEU List, or by SDNs designated under one of the programs identified in § 744.8(a)(1), or by one or more entities subject to restrictions based upon their ownership, is considered to be a diversion concern to such listed entities or SDNs that own the foreign entity. Because of this diversion concern, a license is required for any transaction where that foreign entity that is owned 50 percent or more, directly or indirectly, by one or more entities is a party to the transaction to the same degree as if the item was being exported, reexported, or transferred (in-country) to a party on the Entity List, MEU List, or SDN List under a program identified in § 744.8(a)(1). This means that any foreign entity owned 50 percent or more by one or more entities on the Entity List or MEU List, or by SDNs designated under programs identified in § 744.8(a)(1), is itself considered to be subject to the license requirements of the Entity List or subject to the requirements under § 744.8, respectively. Paragraph (b) also specifies the rule of most restrictiveness, as described under section II.A.1 of this IFR also applies to entities on the Entity List, or MEU List, or SDN List. Paragraph (b) also specifies that

if an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities on the Entity List or the MEU List, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available.

Paragraph (c) (Due diligence for foreign entities with less than 50 percent ownership by listed entities or SDNs or for parent entities of listed entities) alerts exporters, reexporters, and transferors to act with caution when considering a transaction with a non-Entity List, non-MEU List, or non-§ 744.8 foreign entity in which one or more entities identified on the Entity List, MEU List, or SDN List under a program identified in § 744.8 has a significant ownership interest that is less than 50 percent or for parent entities of listed entities. These foreign affiliates of listed entities may not necessarily raise the same diversion concern that warrants the listed entities license requirements and other Entity List and MEU List restrictions extending to these foreign affiliates of listed entities, but additional due diligence is warranted by exporters, reexporters, and transferors because of the minority ownership by listed entities in these foreign affiliates of listed entities and the opaque ownership structures and limited access to accurate ownership data in certain jurisdictions.

BIS estimates that this addition of supplement no. 8 to part 744 will not result in any additional license applications submitted to BIS annually because this supplement is limited to providing guidance, and the annual increase has already been estimated and accounted for in the other changes included in this IFR.

3. Addition of one new Red Flag to assist with compliance of the Affiliates rule.

In supplement no. 3 to part 732—BIS’s “Know Your Customer” Guidance and Red Flags, this IFR adds one new Red Flag that is intended to provide additional compliance guidance to assist exporters, reexporters, and transferors as part of their compliance programs for applying the Affiliates rule. New Red Flag 29 identifies a scenario where an exporter, reexporter,

or transferor has “knowledge” that a foreign entity has one or more owners that are listed on the Entity List or the MEU List, or that are unlisted entities that are subject to license requirements or other restrictions based upon their ownership. New Red Flag 29 specifies that such exporters, reexporters, or transferors have an affirmative duty to determine the percentage of ownership of 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.

BIS also provides this Table 1 in the preamble of this IFR to assist understanding of the changes being made in this IFR.

Table 1—Compliance Aid for Understanding the Application of the Affiliates rule for the Entity List, MEU List, and SDN designations under § 744.8(a)(1)

Types of Entities	Application Notes
<p>Listed entities. A foreign entity listed on the Entity List, MEU List, or in SDN designations in § 744.8(a)(1), including any branch or sales office that is not legally distinct from the listed entity.</p>	<ul style="list-style-type: none"> • These entities are currently subject to Entity List, MEU List, and § 744.8 restrictions under the ‘legally distinct’ standard and will continue to be subject to such restrictions under the Affiliates rule. • These requirements applied to all addresses of these entities located in the destination under which the entities were listed. • Prior to this IFR, there were three entities on the Entity List that were subject to a worldwide license requirement. • Because of the changes made in this IFR, the requirements for all listed entities on the Entity List, MEU List, and the requirements in § 744.8 will now apply to all foreign countries. • For example, an entity listed on the Entity List under China has a sales office in Malaysia. Prior to this IFR, the sales office in Malaysia of the listed Chinese entity was not included within the scope of the Entity List license requirements, unless BIS listed that Chinese sales office in Malaysia also on the Entity List or there was information that the item was intended for the listed Chinese entity.
<p>Foreign affiliates of listed entities that meet the Affiliates rule. Foreign affiliates of listed entities owned 50 percent or more, directly or indirectly, by one or more listed entities on the Entity List, MEU List, or an SDN identified in § 744.8(a)(1)</p>	<ul style="list-style-type: none"> • These entities meet what is described in this IFR as the Affiliates rule and are subject to the license requirements and other restrictions under the Entity List, MEU List, or § 744.8.

<p>or by one or more entities subject to restrictions based upon ownership.</p>	<ul style="list-style-type: none"> • This is an expansion of the Entity List, MEU List, and § 744.8 license requirements that is needed to protect U.S. national security and foreign policy interests because of the diversion concerns with these entities. • These requirements apply to all foreign countries regardless of under which destination the listed entity or entity's owners are listed. • This IFR adds a TGL that temporarily authorizes (i) exports, reexports, or transfers (in-country) to or within any destination in Country Group A:5 or A:6 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership, and (2) exports, reexports, or transfers (in-country) to or within any destination other than Country Group E:1 or E:2 when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List, or entities subject to Entity List or MEU List restrictions based upon their ownership; <i>and</i> such party to the transaction is a joint venture with a non-listed entity headquartered in the United States or Country Group A:5 or A:6 that is not owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List or entities subject to Entity List or MEU List restrictions based upon its ownership. The TGL expires on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].
<p><i>Foreign affiliates of listed entities owned by listed entities where percentage of ownership cannot be determined (unresolvable Red Flag entities).</i></p> <p>Foreign affiliates of listed entities that have some direct or indirect ownership by listed entities on the Entity List, MEU List, or by SDNs in § 744.8(a)(1), but the exporter, reexporter, or transferor cannot determine whether the listed entity ownership meets the Affiliates rule.</p>	<ul style="list-style-type: none"> • The Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis, so “knowledge” is <i>not</i> required to trigger these end-user requirements under the EAR, although “knowledge” is a factor that is considered when determining penalty calculations for a violation of the EAR. • By adding a requirement to resolve the red flag to §§ 744.11 and 744.21, BIS is

	<p>informing the public that when an exporter, reexporter, or transferor has “knowledge” that a foreign entity has one or more direct or indirect owners that are listed on the Entity List or MEU List, it has an affirmative duty to determine the percentage of ownership of 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.</p> <ul style="list-style-type: none"> • Because of diversion concerns to listed entities, including concerns about listed entities obfuscating their ownership stakes in foreign affiliates of listed entities as a method to evade Entity List or MEU List license requirements, this IFR specifies that the exporter, reexporter or transferor must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available.
<p><i>Foreign companies where there is no “knowledge” that the foreign entity is owned by a listed entity.</i></p>	<ul style="list-style-type: none"> • BIS advises exporters, reexporters, and transferors to exercise due diligence as part of their internal compliance programs with such foreign companies because as noted in the previous row, the Entity List, MEU List, and § 744.8 requirements are enforceable on a strict liability basis. • This means that exporters, reexporters, and transferors are responsible if they engage with a foreign entity that is in fact owned 50 percent or more by a listed entity on the Entity List, MEU List, or an SDN designation under § 744.8, or by entities subject to restrictions based upon their ownership. • Accordingly, exporters, reexporters, and transferors have an affirmative responsibility to know the ownership of the foreign companies that are parties to a transaction. • Exporters, reexporters, and transferors must adopt a risk-based compliance program to assist them in complying with these requirements. • Supplement No. 3 to Part 732—BIS’s “Know Your Customer” Guidance and Red Flags is an EAR regulatory resource that assists exporters, reexporters, and transferors in developing their compliance programs.

<i>U.S. entities owned by listed entities.</i>	<ul style="list-style-type: none"> • This IFR does not impose restrictions, as the Affiliates rule established in this IFR applies only to foreign companies, nor does it limit any compliance obligations that may exist under other provisions of the EAR or under the regulations of other agencies.
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Savings Clause

For the changes being made in this IFR, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on [INSERT DATE OF FILING FOR PUBLIC INSPECTION], pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR), provided the export, reexport, or transfer (in-country) is completed no later than on [INSERT DATE 30 DAYS AFTER DATE OF FILING FOR PUBLIC INSPECTION].

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included ECRA (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS’s principal authorities and serves as the authority under which BIS issues this rule. In particular, and as noted elsewhere, Section 1753 of ECRA (50 U.S.C. 4812) authorizes the regulation of exports, reexports, and transfers (in-country) of items subject to U.S. jurisdiction. Further, Section 1754(a)(1)-(16) of ECRA (50 U.S.C. 4813(a)(1)-(16)) authorizes, *inter alia*, the establishment of a list of controlled items; the prohibition of unauthorized exports, reexports, and transfers (in-country); the requirement of licenses or other authorizations for exports, reexports, and transfers (in-country) of controlled

items; apprising the public of changes in policy, regulations, and procedures; and any other action necessary to carry out ECRA that is not otherwise prohibited by law. Pursuant to Section 1762(a) of ECRA (50 U.S.C.4821(a)), these changes can be imposed in an IFR without prior notice and comment.

Rulemaking Requirements

1. BIS has examined the impact of this rule as required by Executive Orders (E.O.) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (*e.g.*, potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). Pursuant to E.O. 12866, as amended, this interim final rule has not been determined to be a “significant regulatory action.” This interim final rule is not a regulatory action pursuant to E.O. 14192 because it is not significant under E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694-0088, “Simple Network Application Process and Multipurpose Application Form,” which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694-0096 “Five Year Records Retention Period,” which carries a burden hour estimate of less than 1 minute;
- 0607-0152 “Automated Export System (AES) Program,” which carries a burden hour estimate of 3 minutes per electronic submission; and

- 0694-0134 “Procedure for parties on the Entity List or the Unverified List to Request Removal or Modification of their Listing,” which carries a burden hour estimate of 15 hours per electronic submission.

BIS estimates that these changes to the Entity List and related provisions and to § 744.8 under the EAR will result in an additional 245 license applications submitted annually to BIS under OMB Control Number 0694-0088 and the changes to § 744.16(e) will result in an additional 35 appeals submitted annually to BIS under OMB Control Number 0694-0134. However, the additional burden falls within the existing estimates currently associated with these control numbers. Additional information regarding these collections of information—including all background materials—can be found at: <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. Pursuant to section 1762 of ECRA (50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because neither the APA nor any other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no Final Regulatory Flexibility Analysis is required, and none has been prepared.

List of Subjects

15 CFR Part 732 and 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research,

Science and technology.

15 CFR Part 736

Exports.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, parts 732, 734, 736, 744, and 748 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 732—STEPS FOR USING THE EAR

1. The authority citation for part 732 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228.

2. Supplement no. 3 to part 732 is amended by adding paragraph (b)29 to read as follows:

Supplement No. 3 to Part 732—BIS’s “Know Your Customer” Guidance and Red Flags

* * * * *

(b) * * *

29. 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, or that are unlisted entities that are subject to license requirements or other restrictions based upon their ownership, it has an affirmative duty to determine the percentage of ownership by those 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 owner or owners of that foreign entity, unless a license exception is available.

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

3. The authority citation for part 734 is revised to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 7, 2024, 89 FR 88867 (November 8, 2024).

4. Section 734.9 is amended by:

- a. adding three sentences to the end of paragraph (e) introductory text; and
- b. adding two sentences to the end of the paragraph (g) introductory text.

The additions read as follows:

§ 734.9 Foreign-Direct Product (FDP) Rules.

* * * * *

(e) * * * Consistent with the introductory text to the Entity List in supplement no. 4 to part 744, the end-user scope of the Entity List FDP rules also includes any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or unlisted entities that are subject to license requirements or other restrictions based upon their ownership, including at least one entity that meets the end-user scope under this provision. This end-user scope applies to all entities on the Entity List with a footnote referenced under this paragraph (e). If the foreign entity is owned 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity with a footnote referenced under this paragraph (e), these Entity List FDP requirements are applicable, even when only one of the owners meets the end-user criteria under this paragraph (e).

* * * * *

(g) * * * Consistent with the introductory text to the Entity List in supplement no. 4 to part 744, the end-user scope of the Russia/Belarus-Military End User and Procurement FDP rule also includes any foreign entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity that meets the end-user scope of this provision. If the foreign entity is owned 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership, including at least one entity within the end-user scope defined by paragraph (g)(2) of this section, these Russia/Belarus-Military End User and Procurement FDP requirements are applicable, even when only one of the owners meets the end-user criteria under paragraph (g)(2) of this section.

* * * * *

PART 736—GENERAL PROHIBITIONS

5. The authority citation for part 736 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 7, 2024, 89 FR 88867 (November 8, 2024); Notice of May 7, 2025, 90 FR 19619 (May 9, 2025).

6. Supplement No. 1 to part 736 is amended by adding paragraph (g).

The addition reads as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

(g) *General Order No. 7.* General Order No. 7. TGL—Non-listed foreign affiliates of listed entities.

(1) *Authorization*, TGL—Non-listed foreign affiliates of listed entities authorizes exports, reexports, or transfers (in-country) as follows:

(i) to or within any destination in Country Group A: 5 or A:6 (supplement no. 1 to part 740) when a party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List (supplement no. 4 to part 744) or Military End-User (MEU) List (supplement no. 7 to part 744), or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership; *and*

(ii) to or within any destination other than Country Group E:1 or E:2 when the following criteria are met:

(A) A party to the transaction is a non-listed foreign affiliate of a listed entity that is owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or on the MEU List or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership; *and*

(B) Such party to the transaction is a joint venture with a non-listed entity headquartered in the United States or Country Group A:5 or A:6 that is not owned 50 percent or more, directly or indirectly, individually or in aggregate, by one or more listed entities on the Entity List or the MEU List or by unlisted entities that are subject to Entity List or MEU license requirements or other Entity List or MEU restrictions based upon their ownership.

(2) *Limitation of authorization*. This TGL only overcomes the license requirements described in §§ 744.11 and 744.21 of the EAR applicable to the non-listed foreign affiliate to which this TGL applies. Persons must comply with all provisions of the EAR, including any additional applicable license requirements.

(3) *Validity date*: Paragraph (g) expires on [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

(4) *Recordkeeping requirement.* All exports, reexports, transfers (in-country), and exports from abroad exported, reexported, or transferred (in-country) that are made under the authorization of this TGL are subject to the recordkeeping requirements of part 762 of the EAR.

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

7. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 et seq.; 50 U.S.C. 1701 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; 22 U.S.C. 7201 et seq.; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2024, 89 FR 77011 (September 20, 2024); Notice of November 7, 2024, 89 FR 88867 (November 8, 2024); Notice of August 4, 2025, 90 FR 37999 (August 6, 2025).

8. Section 744.8 is amended by:

a. In paragraph (a)(2), adding a new second and third sentence, and

b. Revising the first sentence of paragraph (b) to read as follows:

§ 744.8 Restrictions on exports, reexports, and transfers (in-country) when certain persons designated on the list of Specially Designated Nationals and Blocked Persons (SDN List) are a party to the transaction.

(a) * * *

(2) * * * These EAR controls also apply to any foreign affiliate of a listed entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more persons blocked pursuant to the programs listed in paragraph (a)(1) of this section. An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in paragraph (a)(1) of this section, is subject to the most

restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR.

* * * * *

(b) Unless the export, reexport, or transfer (in-country) is authorized under an OFAC specific or general license or exempted under OFAC's regulations, a license is required under the EAR for the export, reexport, or transfer (in-country) of any item “subject to the EAR” when a person who is designated on OFAC’s SDN List with, or blocked pursuant to, any of the identifiers set forth in paragraph (a)(1) of this section is a party to the transaction as described in § 748.5(c) through (f). * * *

* * * * *

9. Section 744.11 is amended by adding paragraph (a)(1) to read as follows:

§ 744.11 License requirements that apply to entities acting or at significant risk of acting contrary to the national security or foreign policy interests of the United States.

* * * * *

(a) * * *

(1) *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.* The Entity List license requirements and other Entity List restrictions also apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or unlisted entities that are subject to Entity List license requirements or other Entity List restrictions based upon their ownership. The Entity List license requirements and other Entity List restrictions do not apply to foreign affiliates that are owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities that are operating at an address listed on the Entity List if the entities operating at that address are not specifically identified on the Entity List. An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some

combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. If an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available (see Red Flag 29 in supplement no. 3 to part 732).

* * * * *

10. Section 744.16 is amended by revising paragraph (e) introductory text to read as follows:

§ 744.16 Entity List.

* * * * *

(e) *Removal or modification requests.* Any entity listed on the Entity List or the owner or operator of any address that presents a high diversion risk listed on the Entity List may request that its listing be removed or modified. Any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the Entity List, or by entities subject to Entity List license requirements or other Entity List restrictions based upon their ownership, may request that its Entity List owner's entry listing be modified to exclude the requester. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230.

* * * * *

11. Section 744.21 is amended by:

- a. Adding paragraph (a)(3);
- b. Revising paragraph (b)(2) introductory text; and

c. Adding one sentence to the end of paragraph (d).

The additions and revision read as follows:

§ 744.21 Restrictions on certain ‘military end uses’ or ‘military end users’.

(a) * * *

(3) MEU List and Entity List restrictions extend to foreign affiliates of listed entities owned 50 percent or more by one or more listed entities or entities subject to Entity List or MEU List restrictions based upon their ownership. The MEU List and Entity List license requirements in paragraphs (a)(1) and (2) of this section also apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or entities subject to Entity List or MEU List restrictions based upon their ownership. The license requirements in paragraphs (a)(1) and (2) of this section do not apply to unlisted foreign affiliates that are owned, directly or indirectly, individually or in the aggregate, solely by one or more unlisted ‘military end users,’ unless the unlisted foreign affiliate itself meets the definition of a ‘military end user.’ An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. If an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country) (see Red Flag 29 in supplement no. 3 to part 732).

* * * * *

(b) * * *

(2) *Requests for removal from or modification of ‘Military End User’ (MEU) List and Entity List.* Any entity listed on the MEU List or Entity List pursuant to this section may request

that its listing be removed or modified. Any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the MEU List or Entity List or subject to MEU List or Entity List restrictions based upon their ownership, may request that its MEU List or Entity List owner's entry listing be modified to exclude the requester. All such requests, including reasons therefor, must be in writing and sent to: Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW, Room 3886, Washington, DC 20230; or by email at *ERC@bis.doc.gov*. In order for an entity listed on the MEU List or the Entity List pursuant to this section to petition BIS for their removal or modification, as applicable, the entity must address why the entity is not a 'military end user' for purposes of this section.

* * * * *

(d) * * * See supplement no. 2 to part 748, paragraph (c)(c) of the EAR for unique application and submission requirements for Affiliate rule entities that meet the criteria under paragraph (a)(3) of this section.

* * * * *

12. Supplement no. 4 to part 744 is amended by revising the introductory text to the supplement to read as follows:

Supplement No. 4 to Part 744—Entity List

This supplement lists certain entities or addresses subject to license requirements and other Entity List restrictions for specified items under this part 744 and part 746 of the EAR. License requirements for these entities include exports, reexports, and transfers (in-country) unless otherwise stated. A license is required, to the extent specified on the Entity List, to export, reexport, or transfer (in-country) any item subject to the EAR when an entity or a party to the transaction is operating at an address that is listed on the Entity List under an address entry is a party to the transaction as described in § 748.5(c) through (f) of the EAR. The Entity List license requirements and other Entity List restrictions also apply to any foreign entity that is owned,

directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or entities that are subject to restrictions based upon their ownership. An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. If an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country), unless a license exception is available (see Red Flag 29 in supplement no. 3 to part 732). This list is revised and updated on a periodic basis in this supplement by adding new or amended notifications and deleting notifications no longer in effect.

* * * * *

13. Supplement no. 7 to part 744 is amended by revising the introductory text to the supplement to read as follows:

Supplement No. 7 to Part 744—‘Military End-User’ (MEU) List

The license requirement for entities listed in supplement no. 7 to part 744 applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to part 744. A license is required to export, reexport, or transfer (in-country) any item subject to the EAR listed in supplement no. 2 to part 744 when an entity that is listed on the MEU List is a party to the transaction as described in § 748.5(c) through (f). No license exceptions are available for exports, reexports, or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744, except license exceptions for items authorized under the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) and (ii) of the EAR as specified in § 744.21(c). The MEU List license requirements and other MEU List restrictions

also apply to any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities or entities that are subject to restrictions based upon their ownership. An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. If an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country) (*see* Red Flag 29 in supplement no. 3 to part 732). The license application procedure and license review policy for entities specified in this supplement 7 to part 744 is specified in § 744.21(d) and (e).

* * * * *

14. Supplement no. 8 to part 744 is added to read as follows:

Supplement No. 8 to Part 744—Guidelines for Applying 50 Percent Ownership Rule to Entity List Entries and Other End-User Controls

(a) *Scope.* These guidelines relating to the status of foreign affiliates of listed entities owned by individuals or entities identified on the Entity List, ‘Military End-User’ (MEU) List, or Specially Designated Nationals (SDN) List under programs listed in § 744.8(a)(1) of this part. This supplement sets forth guidelines with respect to foreign affiliates of listed entities owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more listed entities on the Entity List in supplement no. 4 to this part, the MEU List in supplement no. 7 to this part, by one or more SDNs designated under programs listed in § 744.8(a)(1) of this part, or by one or more entities subject to restrictions based upon ownership by listed entities, as well as for when an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities on the

Entity List or the MEU List, because the involvement of such entities as party to the export, reexport, or transfer (in-country) presents a diversion concern.

(b) *Application of Affiliates rule.* Any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the Entity List, ‘military end-users’ on the MEU List, or SDNs designated under programs listed in § 744.8(a)(1), or by one or more entities subject to restrictions based upon ownership by listed entities, is considered to be a diversion concern to such listed entities or SDNs. A license is required for any transaction where that foreign entity is a party to the transaction to the same degree as if the export, reexport, or transfer (in-country) was being exported, reexported, or transferred (in-country) to its owners. Consequently, any foreign entity owned 50 percent or more by one or more entities on the Entity List, MEU List, or SDNs designated under programs listed in § 744.8 is itself considered to be listed on the Entity List, MEU List, or subject to the requirements under § 744.8, respectively. An entity owned 50 percent or more, directly or indirectly, by multiple entities subject to EAR license requirements pursuant to some combination of the Entity List, MEU List, or SDN List designated under programs listed in § 744.8(a)(1), is subject to the most restrictive license requirements, license exception eligibility, and license review policy applicable to one or more of its owners under the EAR. If an exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned, directly or indirectly, by one or more listed entities on the Entity List or MEU List, they must resolve the Red Flag or obtain a license from BIS prior to proceeding with the export, reexport, or transfer (in-country) (see Red Flag 29 in supplement no. 3 to part 732).

(c) *Due diligence for foreign entities of listed entities with less than 50 percent ownership by listed entities or SDNs or for parent entities of listed entities.* Exporters, reexporters, and transferors are advised to act with caution when considering a transaction with a non-Entity List, non-MEU List, or non-§ 744.8 foreign entity in which one or more entities identified on the Entity List, MEU List, or SDNs designated under programs identified in § 744.8 has a significant

direct or indirect ownership interest that is less than 50 percent or is a parent entity of listed entities. Such entities may be the subject of future designation on the Entity List, MEU List, or the SDN List under one of the designations identified in § 744.8, or of enforcement actions. Exporters, reexporters, and transferors should undertake due diligence to ensure that items exported to the entity are not destined for the Entity List party, MEU List party, or SDN and are reminded that the EAR imposes licensing requirements, such as end-user and end-use based restrictions in part 744 of the EAR, that could apply to such companies even if they are legally separate from the listed entity.

* * * * *

PART 748—APPLICATIONS (CLASSIFICATION, ADVISORY, AND LICENSE) AND DOCUMENTATION

15. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. 4801-4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228.

16. Section 748.8 is amended by adding paragraph (aa) to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(aa) Affiliates rule entities.

17. Supplement no. 2 to part 748 is amended by adding paragraph (cc) to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(cc) *Affiliates rule entities.* To request a license for an export, reexport, or transfer (in-country) for any foreign entity that is owned, directly or indirectly, individually or in aggregate, 50 percent or more by one or more entities listed on the Entity List in supplement no. 4 to part 744, ‘Military End-User’ (MEU) List in supplement no. 7 to part 744, by one or more Specially Designated Nationals (SDNs) designated under programs listed in § 744.8(a)(1), or by one or

more unlisted entities that are subject to restrictions based upon ownership by listed entities, or for an export, reexport, or transfer (in-country) when the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or the ‘military end users’ on the MEU List, you must specify “Affiliates rule” in Block 9 (Special Purpose) of the BIS-748P “Multipurpose Application” form. The application also must specify the names of the listed party or parties that own an aggregate 50 percent or more, directly or indirectly, individually or in aggregate, of that entity(ies) listed on the license application, including identifying the percentage of ownership by listed parties and identifying the method that the applicant used to make that determination. For license applications when the exporter, reexporter, or transferor cannot determine the ownership percentage of a foreign entity that is an entity owned by one or more listed entities on the Entity List or ‘military end users’ on the MEU List, the license application must specify the names of the listed party or parties that own that entity and explain the due diligence conducted to determine the percentage of ownership, including providing an explanation for why percentage of ownership was not able to be determined.

Julia A. Khersonsky,

Deputy Assistant Secretary for Strategic Trade.

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