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Businesses Face Sweeping Expansion of U.S. Export Controls

The widely-anticipated change to the rules around U.S. export controls—known as the 50% rule—is expected to affect thousands of new entities

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The new policy is meant to close what the Trump administration calls a loophole that it says allows foreign adversaries to get access to sensitive U.S. goods by diverting them to proscribed companies. Above, Port Elizabeth in Elizabeth, N.J. PHOTO: AFP VIA GETTY IMAGES

The Trump administration has launched a massive expansion of export restrictions, giving companies 60 days to prepare for broad changes that could impact businesses across the economy.

The Commerce Department's Bureau of Industry and Security announced the change, known as the "50% rule," on Monday, effectively expanding what is known as the entity list of businesses and people barred from receiving U.S. technology. Export restrictions will apply to any company at least 50% owned by one or more listed entities.

The expansion has potentially massive implications.

"I don't believe that most have a sense of how many thousands and thousands and thousands of new entities will be subject to export-control restrictions," said Kit Conklin, a former senior adviser to the House Select Committee on the Chinese Communist Party who now is the global head of risk and compliance at Exiger, a supply-chain screening company.

"It's every industry vertical that you can imagine," Conklin said. "It's going to impact everything from civil aviation to the auto sector."

The U.S. has in recent years leaned into export controls to stop Russia from gaining technology it can use in its war in Ukraine and to constrain China's access to advanced chips and artificial intelligence. The new policy is meant to close what the Trump administration calls a loophole that it says allows foreign adversaries to get access to sensitive U.S. goods by diverting them to proscribed companies.

The rule shifts the burden of screening for potentially dangerous counterparties from the government to companies, said Matt Axelrod, a partner at law firm Gibson Dunn who led export controls enforcement at BIS under the Biden administration.

"It's on the company to try to figure it out rather than throwing their hands up and saying, 'Well we don't know so it's OK to ship,'" Axelrod said.

Commerce said the restrictions go into effect immediately, but some exceptions could be available up to 60 days after publication in the Federal Register on Tuesday. Interested parties have one month to submit comments on the rule.

Trade compliance professionals have known for months some version of the rule could be coming. U.S. financial sanctions have long had their own version of the 50% rule to stop financial flows to problematic entities, and officials have periodically pushed for expanding that logic to export controls.

Landon Heid, Trump's choice to lead export-controls enforcement at Commerce until his nomination was pulled earlier this month, hinted at such a rule during his confirmation hearing in April. Risk Journal previously reported a draft of the rule has been under consideration since at least May.

But the hints only gave companies a rough idea of what the rule could look like, said former Commerce official Opher Shweiki, now a partner at law firm Akin Gump.

"Until the rule was actually drafted, it was difficult for companies to put concrete steps in place," Shweiki said. "Companies may have to find entirely new supply sources now. That's not an easy thing to do on the spot."

Shweiki said the rule could make companies more risk-averse, because its "strict liability" standard doesn't allow them to defend a transaction by claiming they had no knowledge their counterparty was subject to export restrictions.

Companies have the option to try to seek permission for a transaction, but many may simply decide to forego potentially problematic transactions, Shweiki said.

"I think a lot of companies are potentially just going to say no," Shweiki said.

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Corrections & Amplifications

The restrictions imposed by the Commerce Department come into effect immediately, though some exceptions are available for up to 60 days, Commerce said in an update to its original announcement. An earlier version of this article cited the department's earlier statement that the rule would "generally" go into effect in 60 days after it was published in the Federal Register. (Updated on Sept. 30)