

## **Export Control Reform Initiative Fact Sheet #3: Rebuilding the Control Lists**

### **What is the current status of rebuilding the control lists?**

For a quick-glance reference tool to see how much progress has been made in rebuilding the control lists, please see the [Export Control Reform \(ECR\) Control List Tracking Sheet](#).

### **Why do we need to rebuild the control lists?**

The current system has two different control lists – the U.S. Munitions List (USML) and the Commerce Control List (CCL) – administered by two different departments, the Department of State for the USML and the Department of Commerce for the CCL, under different 1970s-era statutory authorities that have significantly different requirements. Phase II of ECR involves reconciling various definitions, regulations, and policies for export controls. This process, which is nearly complete, is achieved through the rebuilding of the control lists.

- Prior to ECR, the USML was a short list with broad controls based largely on design-intent. This means that it controlled anything that is specifically designed, developed, configured, adapted, or modified for a military application, often without any further specificity. This allowed it to control anything that has a military application, from a weapons system itself to every nut, bolt, and screw that may be used on that system.
- The CCL is a long list that is largely “positive”, which means it contains detailed technical parameters for most items it controls, so it is generally easier to determine whether or not an item is controlled. It is also structured to allow controls to be tailored – “right sized” – so that different licensing requirements exist for different countries.
- Two lists made sense back when items were developed by or for the military and there was little overlap in the types of items listed. But this is no longer true. Most technology development now takes place in the commercial sector, with many items developed for a civilian use but that can also be used for a military application, and thus we increasingly see overlap and confusion as to which list controls a particular item.
- Prior to ECR, the U.S. export control system had not been updated to reflect this change, resulting in a blurring of what is controlled on which list.
- This caused significant ambiguity, confusion and jurisdictional disputes between the departments, delaying clear licensing decisions for months, and impeding the ability of the enforcement agencies to enforce the controls.
- The broad scope of our pre-ECR controls without prioritization strained both licensing and enforcement resources and imposed significant resource constraints on U.S. firms to comply with the controls.

### **What does the “Bright Line” process do?**

The “bright line” process is an interagency technical review led by the Department of Defense to determine what should be controlled on the USML and what should not, and to describe what items are subject to control based on objective technical parameters.

### **What does the “Bright Line” process NOT do?**

- It does not decontrol items moved from the USML to the CCL.
- It does not permit exports or reexports to China and other countries subject to U.S. arms embargos for current munitions items that will move to the new controls on the Commerce Control List.
- It does not remove the Department of Defense or the Department of State from the process of determining how an item is controlled or from reviewing export license applications for national security and foreign policy reasons, including to prevent human rights abuses.
- It does not cause the United States to be non-compliant with its multilateral export control regime commitments or international obligations.

### **Why make this change?**

Revising and rebuilding the control lists improves U.S. national security now and in the future by:

- Providing clarity on what is controlled, making it easier for exporters to comply, improving the U.S. Government’s ability to administer and to enforce, and making it harder for unauthorized or illicit procurement of U.S. controlled items contrary to U.S. national security and foreign policy interests.
- Synchronizing the two departments’ licensing policies where practical and legally permissible, resulting in a *tightening* of U.S. arms embargos.
- Focusing U.S. Government resources on truly sensitive exports and destinations.
- Improving U.S.-Allied military interoperability.
- Saving the U.S. Government time and money, particularly in Department of Defense acquisition costs.
- Largely eliminating the design-out of U.S. origin items, particularly parts and components, because of the scope and complexity of the current U.S. export control system and the requirement of the Arms Export Control Act that all items be controlled the same way regardless of their sensitivity or significance.
- Largely resolving the loss of U.S. control and U.S. visibility into transfers to destinations, end-users, and end-uses of concern, by removing the incentive for foreign manufacturers to replace U.S.-origin items with comparable foreign-made items to avoid the U.S. export control system.
- Improving the long-term health and competitiveness of the U.S. industrial base, which includes maintaining and expanding jobs.
- Bolstering the security of supply, particularly from second- and third-tier suppliers, to the U.S. and Allied militaries.

- Helping to create reliable supplier relationships between U.S. exporters and foreign customers.

### **How is enforcement affected by this change?**

The transfer of certain defense articles from the USML to the CCL does not degrade the U.S. Government's enforcement authorities. Instead, it enables more enforcement tools to be applied to ensure an appropriate balance between improving interoperability with Allies and eliminating the design-out of U.S. content to the detriment of the U.S. industrial base with the continued ability to enforce U.S. controls:

- Penalty parity. Working collaboratively with Congress, the Administration standardized the criminal penalties to a common maximum for items subject to either the State or Commerce regulations, with a fine of the greater of \$1 million or five times the value of the transaction and up to 20 years imprisonment, per violation, or both. Paradoxically, prior to ECR, the maximum prison sentence for criminal violations of the USML controls was only half of the comparable prison sentence for violations of the Commerce Control List controls. They are now the same standardized maximum. Likewise, the maximum civil fines are the same: the greater of \$1 million per violation or twice the amount of the transaction that is the basis of the violation.
- More administrative enforcement tools. Under the Commerce statutory authorities, the U.S. Government has more administrative enforcement tools to apply to violators than under the Arms Export Control Act, especially overseas violators who are beyond the reach of extradition. These additional tools include temporary export denial orders and inclusion on the Denied Persons List, the Entity List, or the Unverified List. The Arms Export Control Act tools include debarment orders and inclusion on the Debarred Parties List. Moreover, the scope of the Commerce statutory authorities are broader than those under the Arms Export Control Act, reaching to items not on the control lists, enabling the U.S. Government to assert control over far more items and to do so more quickly. In addition, the Commerce regulations provide a broader prohibition against taking actions with knowledge that an item has been or will be illegally exported or reexported, which provides the U.S. Government with broader reach to impose administrative penalties against persons who receive or facilitate illegal transfers of controlled items.
- More law enforcement resources. Items subject to Commerce jurisdiction are enforced by criminal investigators from three departments – Commerce, Justice (FBI), and DHS (ICE) – whereas items subject to State jurisdiction are enforced by criminal investigators from only two departments, Justice (FBI) and DHS (ICE). These additional criminal investigators ensure a proper balance between facilitating secure trade with Allies and enforcing U.S. controls.

*To follow developments on the reform initiative, visit [www.export.gov/ecr/](http://www.export.gov/ecr/)*