

Export Control Reform Initiative Fact Sheet #1: The Basics

What is the Initiative?

The President's Export Control Reform (ECR) Initiative is a common sense approach to overhauling the nation's export control system.

- For national security reasons, exporters may be required to obtain government permission to export controlled items – munitions and commercial items with military applications – to countries, end-users or end-uses of concern.
- For foreign policy reasons, exports and re-exports of U.S.-origin items including to certain sanctioned designations like Cuba, Iran, North Korea, Sudan, and Syria, and to end-users or end-uses of concern.
- Controlled items include not just weapon systems but items like night vision cameras, machine tools, and chemicals used in semiconductor fabrication that could also have a military application.
- The pre-ECR export control system was designed to address the challenges of the Cold War world and continues to operate under 1970s-era statutory authorities.
- Every President since President Kennedy has implemented reforms to the export control system, each with some successes, but it was determined that the system that evolved, built layer upon layer, reached the point where incremental changes were no longer a viable mechanism for meeting U.S. national security needs.
- The President's entire national security team supports the ongoing comprehensive overhaul of the export control system to meet the current and anticipated U.S. national security and foreign policy objectives of the 21st century.
- This initiative is not a de-control effort nor is it part of the National Export Initiative, which seeks to promote U.S. exports and economic growth.

Who administers the system?

The export control system is administered by seven primary departments – the Departments of Commerce, Defense, Energy, Homeland Security, Justice, State, and the Treasury.

- There are two different export control lists: the U.S. Munitions List (USML) administered by the Department of State, and the Commerce Control List (CCL) administered by the Department of Commerce. The two lists were established under different statutory authorities that have significantly different requirements.
- There are three primary export licensing agencies: Commerce, State, and the Treasury.
- A multitude of agencies – Commerce, Defense, Homeland Security, Justice, State, and the Treasury – each have authority to investigate and/or enforce some or all of the three licensing agencies' export controls.
- Prior to ECR, all these departments operated on a number of separate information technology (IT) systems.

Why did we need to overhaul the previous system?

The Administration determined that fundamental reform of the export control system was necessary to overcome a number of inefficiencies and redundancies and to ensure that the system adequately meets U.S. national security and foreign policy objectives.

- Maintaining two different control lists created significant ambiguity for the exporting community, confusion and jurisdictional disputes among the departments, delaying clear license decisions for months, and sometimes for years.
- Items specifically designed, developed, configured, adapted, or modified for a military application were included on the USML. This broad design-intent control resulted in controlling everything from a weapons system itself to every nut, bolt, and screw that may be used on that system.
- The same ambiguity and the delays adversely impacted enforcement agencies' ability to quickly verify if an item is controlled and how, and hampered the aggressive pursuit of investigations and the criminal prosecution of violators.
- Multiple departments with overlapping and duplicative export enforcement authorities resulted in redundancies and problems in coordination, which jeopardized effective investigation and prosecution of violations.
- The broad scope of controls without prioritization has strained both licensing and enforcement resources and imposed significant resource constraints on U.S. firms to comply with the controls. The solution is not simply to expand the government by adding more licensing and enforcement personnel.
- Prior to ECR none of the licensing agencies' saw the others' licenses, and each operated under different procedures and definitions, leading to gaps in the system and different licensing requirements for nearly identical products.
- The lack of a unified IT system meant the U.S. Government did not have comprehensive visibility into what it has approved and, more significantly, what it has denied for export.
- As a result, the pre-ECR system was overly complicated, contained too many redundancies, and tried to protect too much. This made it harder to administer and enforce the controls, and harder for exporters to comply. It also meant that items could end up where they should not with the potential that we cannot effectively prosecute violators.

How does all this impact national security?

The purpose of export controls is to ensure that items do not end up in the hands of those who intend to do the United States or its allies harm. It is a risk-based system, where most items are generally authorized for export to low-risk destinations or end-users, others are only allowed after closer U.S. scrutiny of the destination or end-user, while others, deemed too risky, are denied.

- The former system generally treated all items the same, resulting in the controls applied to an F-18, for example, being the same as the controls for a bolt that is used on that F-18, straining U.S. Government resources without focusing on those items that warrant more scrutiny and control.

- The reach of these U.S. controls for all items, large and small, imposed an export license requirement for any item a close ally needed to maintain and service its U.S.-origin weapon systems.
- The reach of these controls also encouraged second-sourcing items from non-U.S. suppliers to avoid the U.S. licensing system. This harmed U.S. manufacturers, especially second- and third-tier suppliers, diminishing their sales and driving up costs to the U.S. military for the same items or causing the U.S. military to source from non-U.S. manufacturers.
 - In response to a Department of Commerce industry survey, U.S. firms estimated that they lost in excess of \$2.1 billion in annual sales due to export controls and billions more in lost opportunities to even compete for a sale.
- The design-out of U.S.-origin items also means that the United States has no control over the transfers of such items and less visibility into their transfers to possible destinations, end-users, and end-uses of concern, including human rights abuses.
- Today's weapon systems are typically jointly developed, but the U.S. export control system had not been updated to reflect this change, until the implementation of ECR. This drove up costs to the U.S. military and U.S. allies in joint programs.
- The control list-related reforms are moving less sensitive items, mostly parts and components, from the State munitions list to the Commerce list. Commerce's statutory authorities allow these items to continue to be controlled but eligible to be shipped to close allies and partners with certain enhanced compliance requirements without a specific license. These items are still shipped via a type of authorization; the items are not de-controlled. The additional compliance measures ensure that the U.S. Government continues to have a paper-trail to enforce U.S. controls.
- The net result of the list reforms will be to improve U.S. interoperability with close allies and partners while enabling the U.S. Government to focus on transactions of concern. Such reforms will also result in the collateral national security benefit of contributing to the health and competitiveness of the defense and manufacturing industrial base, thereby maintaining and expanding U.S. manufacturing jobs.
- The reform initiative enhances, not eases, the prohibitions on destinations like Cuba, Iran, North Korea, Sudan, and Syria, and enhances, not eases, U.S. policy of not supporting China's military modernization program.

When will changes be made?

The Administration has deployed a three-phase implementation plan.

- Phases I and II, which have been achieved largely through Executive action, fix problems across the prior system, resulting in fundamental reform while maintaining the current interagency structure.
- Phase I is complete, and the Administration has made significant progress to date in implementing all facets of Phase II:
 - The Administration has developed and applied a methodology for rebuilding the control lists and published a series of proposed rules for public comment between 2011 and 2015. By August 2015, it had published eighteen of the twenty-one USML category rules for public comment, fifteen of which have been published in final form

- and gone into effect. The Administration is continuing to publish the remaining proposed and final rules on a rolling schedule.
- The Administration and Congress partnered to pass legislation in December 2012 as part of the National Defense Authorization Act for FY 2013 that restored flexible authority to the President to tailor controls on the export of U.S.-origin satellites and related items. This was the only category that required legislation before the Administration could rebuild it. This category was rebuilt, published in proposed and final form, and went into effect in November 2014.
 - The President directed the most comprehensive update in 36 years of the administration of export and import controls for defense articles and defense services controlled pursuant to the Arms Export Control List when he issued Executive Order 13637 in March 2013.
 - The President issued Executive Order 13558 to create the Export Enforcement Coordination Center (E2C2), which formally opened in March 2012. All departments and agencies with export enforcement responsibilities are working side-by-side, together with the intelligence agencies, to coordinate enforcement actions.
 - In summer 2010, the Administration and Congress also partnered to pass legislation known as the “Comprehensive Iran Sanctions, Accountability, and Divestment Act” (CISADA), to increase the disparate criminal export enforcement penalties to a standardized maximum. It also provided the Department of Commerce with permanent law enforcement authority that had lapsed. This was the only enforcement-related legislation needed to implement Phase I or II reforms.
 - An electronic consolidated list of parties was developed to assist small- and medium-sized companies screen transactions to ensure items are exported in compliance with licensing and other export control requirements. In November 2014, the screening tool was upgraded to allow “fuzzy logic” searches. Downloads of the list and the web tool are resulting in hundreds of thousands of screens per day.
 - Four departments – Commerce, Defense, Energy, and State – are migrating to a single secure licensing IT system administered by Defense, with State successfully moved in July 2013; other departments will follow.
- Phase III will require legislation to implement a government reorganization that would consolidate the current system into a:
 - Single Control List
 - Single Licensing Agency
 - Single Primary Enforcement Coordination Agency
 - Single IT System.
 - This implementation plan is designed to resolve core problems first, before focusing on a government reorganization.
 - The Phase III consolidation plan would eliminate these separate systems, providing a common sense and good government approach to export controls, which is especially important in this era of tightening budgets.

To follow developments on the reform initiative, visit www.export.gov/ecr/