

## **Fact Sheet: Plan for Controlling Items Transferred from the USML to the CCL**

On July 15, 2011, the Department of Commerce published a proposed rule that is the next significant step in the President's Export Control Reform (ECR) Initiative – the creation of a framework for controlling militarily less significant defense articles, largely generic parts and components, on the Commerce Control List rather than the United States Munitions List.

The Commerce Control List is part of the Export Administration Regulations administered by the Commerce Department. The U.S. Munitions List is part of the International Traffic in Arms Regulations administered by the State Department. The Defense Department and, depending upon the item, the Energy Department, review applications for licenses to export items identified on either list.

Controls over items on the Commerce Control List are tailored. Depending on the technical specifications of the item, a license may not be required to particular destinations, or a license may not be required to various groups of allied, partner or other countries so long as certain conditions are fulfilled. Other items, however, may be subject to worldwide or nearly worldwide controls. Articles described on the U.S. Munitions List, however, are all subject to the same controls without variation.

The proposed rule -- *Control of Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)* – sets the stage for focusing strict U.S. export controls on inherently military items that are, for example, critical to maintaining a military or intelligence advantage to the United States while allowing for more flexible controls over exports to NATO and other partner nations for all other defense articles. The proposed rule also is the next step in the process of harmonizing the two control lists so that they may eventually be combined into a single control list administered by a single licensing agency.

As described in earlier Fact Sheets, the Administration is turning the control lists, particularly the U.S. Munitions List, into “positive” lists. A “positive” list controls items based on objective criteria rather than subjective, generic, or design-intent criteria. The Defense Department is taking the lead in drafting a positive U.S. Munitions List, and the defense articles that would move to the Commerce Control List are those that are not identified in the new, positive U.S. Munitions List.

The first draft example of such a positive list was the one the Department of State published in December 2010 for public comment pertaining to military vehicles. The proposed rule Commerce has published describes how all military vehicles, their specially designed parts, components, accessories, and attachments, and related technology and software, not listed in State's proposed revision to its military vehicles category would be controlled after the required congressional notification processes are completed and the Departments of State and Commerce have simultaneously published final rules amending their current control lists.

No items will move to the Commerce Control List until the Administration has had time to review and consider the public and other comments that are submitted about the proposed rule. The changes under consideration for how the United States controls military and other related

items are significant. Thus, before publishing a series of proposed changes to other types of controlled items, the Administration wanted to use its proposed changes related to military vehicles as an example. The description of such examples should make it easier for the interested public to comment on the proposed changes. Comments received on this proposed rule, as well as other considerations related to this proposed rule, will likely influence the Administration's publications regarding controls over other types of items, which it anticipates will be published over the course of this year and next.

### **Commerce Munitions List Concept**

The proposed rule describes how articles that would move to the Commerce Control List would be controlled in a new "600 series" on the Commerce Control List, which would informally be referred to as the Commerce Munitions List (CML). The CML would consist of distinct Export Control Classification Numbers (ECCNs) identified in a "600 series" in each CCL category. The last two characters of the "600 series" entries would correspond to the Wassenaar Arrangement Munitions List (WAML) category to make it easier to track items.

Putting specific defense articles that would move, including defense articles that are now on the Commerce Control List ("018" items), into one series would allow BIS to implement unique controls on CML items given their inherent military nature. Any item not specifically listed on the revised U.S. Munitions List or in the new "600 series" that is within the scope of a pre-existing ECCN would be classified under that pre-existing ECCN. However, items that are not specifically listed in the new "600 series" or identified in a pre-existing ECCN but that are "specially designed" for an item controlled in the CML or the U.S. Munitions List will be controlled by the CML.

This means that all items "specially designed" for any item identified on the U.S. Munitions List or the CML that are transferred to the Commerce Control List will be subject to license requirements. The proposed rule is thus not a step in "decontrolling" items, but rather in tailoring controls on different types of items based on their level of military significance or inherent (as opposed to unique or predominant) military or intelligence utility. For this part of the effort to work, and to address a long-standing issue within U.S. export controls, the proposed regulation includes a new proposed definition of "specially designed" that uses objective criteria to delineate whether something is controlled. This aspect of the regulation is particularly novel and, because of its significance, the Administration strongly encourages industry to review it closely, test how it would work on products they export, and prepare thoughtful comments or suggestions on the definition.

The control requirements for items moved to the CML ("600 series" items) are as follows:

1. CML items will generally be subject to control for National Security Column 1 reasons ("NS1"), Regional Stability Column 1 reasons ("RS1"), Anti-Terrorism Column ("AT1") and United Nations Embargo reasons for control in addition to other required reasons for control (e.g., Missile Technology, Firearms Conventions reasons).

2. The “600 series” would specifically identify *end items* based on Department of Defense reviews of items on the U.S. Munitions List. The following license exceptions would be available to export such *end items*: TMP (temporary exports), RPL (replacement parts), LVS (limited value shipments), GOV (government end users, but limited to personnel and agencies of the United States and agencies of the 36 governments eligible for License Exception Strategic Trade Authorization (STA-36)).
3. In addition, License Exception STA would be available for the export of 600 series *end items* for ultimate government end use in one of the STA-36 countries as long as the items are identified by BIS in writing as authorized for export under STA. Applicants for licenses involving *end items* in the 600 series may request that License Exception STA be identified as applicable for export of a specific end item. If the Departments of Commerce, Defense, and State agree, BIS will designate such items as authorized for export under License Exception STA. Exports of such items to an STA-36 country would be permitted to government and non-government entities as long as the item at issue at the time of export, reexport or transfer (in-country) is ultimately destined for end use by certain specified government agencies (including the armed forces and police).
4. Parts, components, accessories and attachments, and items “specially designed” for defense articles would be eligible for export under license exceptions TMP, RPL, LVS, GOV (subject to the same limitations as for end items), and STA (subject to the same ultimate end use requirements as for end items, but without the need to obtain item-specific BIS authorization).
5. The Commerce Department also would apply a general policy of denial for applications to export or reexport CML items to countries subject to United States arms embargoes, and would publish a list of such countries, drawing from section 126.1 of the International Traffic in Arms Regulations and successive *Federal Register* notices published by the State Department.
6. A more restricted 10 percent (as opposed to 25 percent) *de minimis* rule would apply to reexports of CML items incorporated into foreign-made end items.

In addition, a new 0Y521 category would be created in which to temporarily place emerging technologies which might otherwise be classified as EAR99. This category will provide the U.S. Government with one year to review the new technologies and seek multilateral controls, where justified. Due to an RS1 license requirement, items classified under a 0Y521 ECCN would be subject to a nearly worldwide license requirement (i.e., for every country except Canada), and would have a case-by-case license review policy.

### **Impact of USML to CCL Process**

The proposed rule would establish a structure for making many militarily less significant ITAR items, once moved to the CCL, available on a more flexible basis, thereby allowing timely export of these items in support of military operability with coalition forces. The Administration believes that moving these militarily less significant items to the CCL would address and largely

solve many of the most significant issues and goals of the ECR effort, such as (i) immediate relief from USML controls on non-military end items and militarily less significant parts and components; (ii) the collateral ITAR-specific consequences of such controls (*e.g.*, the need for registration and related ITAR requirements); (iii) the process to accomplish the already agreed-upon transfer of such items to the CCL to allow for more flexible controls consistent with the criteria developed under the ECR initiative; and (iv) the collateral consequences of the “see-through” rule and the “ITAR-free” issues that create an incentive for foreign companies to buy foreign-made items that are not on the WAML instead of the U.S.-origin versions that are on the USML.