

Export Control Reform Initiative Factsheet #7:
Improving the Process for Notifying Congress about
Moving Defense Articles from the U.S. Munitions List to the Commerce Control List

Why did we need to improve this process?

Improving the process strengthens our national security by making the United States an even more reliable supplier of defense articles to our allies and partners. To see how, take a look at the two-part process of notifying Congress when the Administration intends to move defense articles from the U.S. Munitions List (USML) to the Commerce Control List (CCL):

- **In Part 1 (Pre-Notification)**, the Administration apprises the relevant Congressional Committee staffs (the Senate Foreign Relations Committee (SFRC) and the House Committee on Foreign Affairs (HFAC)) about proposed actions, and answers staff questions through a combination of technical briefings and written responses. This discussion period is not legally required, but is a very useful process that allows the Administration to address staff questions and concerns before submitting a “38(f)” notification to Congress as required by law.

- **Part 2 (Notification)** is the 30-day notification period mandated by Section 38(f) of the Arms Export Control Act (AECA). Section 38(f) requires the President to periodically review the items on the USML to determine what items, if any, no longer warrant USML export control. The President will notify the results of these reviews to the Speaker of the House and Chairman and Ranking Members of the SFRC and HFAC. The President has delegated the Section 38 authorities to the Secretary of State, thus the Department of State (the Department) transmits the written Section 38(f) notifications in fact. An item may not be removed from the USML until 30 days after the date on which the President has provided notice of the proposed removal.

The previous time frame for completing Part 1 was unbounded, and was thus unpredictable and could be lengthy. This uncertainty made it difficult for U.S. industry to know when an item’s control status would change, which had broad impacts on both the exporter and recipient. The uncertainty could prevent U.S. companies and even the U.S. Military from being a reliable supplier of items to foreign buyers, and could contribute to the reported efforts of some foreign companies to even design out U.S. defense goods and technologies from their products.

What does the new process do?

The new process institutes a timed discussion period for U.S. Government (USG) technical experts to address Congressional questions and concerns about proposed changes to the USML before the Administration submits the 30-day notification pursuant to Section 38(f). For example, experts can outline the planned controls on items moving from the USML to the CCL, including specific entries on the Commerce Control List and levels of control, the impact of the change on embargoed destinations, and if relevant, how the change interacts with multilateral export control regime obligations (Australia Group, Nuclear Suppliers Group, Missile Technology Control Regime, Wassenaar Arrangement, etc.). The length of the discussion

periods for Export Control Reform (ECR)-related USML changes and non-ECR-related changes to the USML differ. The Administration believes that more time should be available to discuss ECR-related changes given their broad scope.

- **For USML changes related to ECR**, Congressional staffs will have between 77 days and 97 days for review. The time frame will vary based on how long the Administration takes to analyze public comments and prepare an interagency-cleared final version of regulations to implement the changes.
- **For USML changes not related to ECR**, Congressional staffs have up to 37 days for review.

After completing these reviews, the Department will provide the notification to Congress to start the 30-day period required by Section 38(f).

What does the new notification process NOT do?

- It does not short circuit the Congressional oversight process.
- It does not abolish the period of discussion with Congress that currently occurs before the Administration submits a 38(f) notification.
- It does not remove the opportunity for in-depth discussions between Congress and Administration experts about the proposed actions.
- It does not circumvent the 30-day notification process outlined in AECA Section 38(f).

Why was this change made?

Having a timely process to ensure that the USML is regularly updated as the law requires permits the USG to apply export controls appropriate to the level of technology in question in a predictable manner. By regularly revising the USML, the USG will ensure that it maintains case-by-case reviews for proposed exports of a core set of key technologies and items that are capable of being used to pose a serious national security threat to the United States, while facilitating the movement of USML items that do not warrant case-by-case review to the CCL, which can apply more flexible licensing mechanisms. Regular USML updates will allow U.S. companies to plan for the necessary export licensing requirements with more certainty, thus improving their ability to supply foreign customers in a reliable timeframe.

A timed process to discuss proposed changes to the USML with Congress:

- Allows the USG to focus its export control resources (licensing, compliance and enforcement) more efficiently and effectively through the timely update of controls based upon technology changes
- Improves the reputation of U.S. companies as reliable suppliers, which in turn will contribute to the long-term health and viability of the U.S. industrial base.

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