

On July 29, 2024, the US Department of State published a new proposed rule to revise the definition of defense service in the International Traffic in Arms Regulations (22 CFR parts 120-130, "ITAR") in the Federal Register. Interested parties are invited to submit comments to the State Department through September 27, 2024.

Under the new proposed rule, the ITAR would be amended in the following ways:

1. The definition of "defense services" would be revised in § 120.32(a)(1) to include: "assistance, including training or consulting, to foreign persons in the development (including, e.g., design), production (including, e.g., engineering and manufacture), assembly, testing, repair, maintenance, modification, disabling, degradation, destruction, operation, processing, use, or demilitarization of a defense article." The introductory text of paragraph (a)(1) would be amended to clarify that "assistance" includes training or consulting activities.
2. Remove current § 120.32(a)(2) from the definition of "defense services" (e.g., "The furnishing to foreign persons of any technical data controlled under this subchapter, whether in the United States or abroad") because such furnishing of technical data to a foreign person already is covered in §§ 120.50 through 120.52 (in the definitions of export, reexport and retransfer).
3. Remove current paragraph § 120.32(a)(3) from the definition of "defense services" related to military training and insert a new paragraph (a)(2) that directs persons to two new entries for intelligence and military defense services in Category IX of the US Munitions List (USML).
4. Rename Category IX on the USML to "Military Training Equipment, Intelligence Defense Services, and Military Defense Services."
5. Create new proposed paragraphs (s)(2) and (s)(3) within Category IX (paragraph (s)(1) would remain reserved for a future entry). New paragraph (s)(2) would control certain "intelligence assistance" activities furnished to a foreign government, unit, or force, or their proxy or agent, and new paragraph (s)(3) would control certain military and paramilitary assistance activities.

The new proposed Category IX(s)(2) would control intelligence defense services, as follows:

Assistance, including training or consulting, to a foreign government, unit, or force, or their proxy or agent, that creates, supports, or improves intelligence activities, including through planning, conducting, leading, providing analysis for, participating in, evaluating, or otherwise consulting on such activities, for compensation, except for the following types of assistance:

- (i) Furnishing of medical, translation, financial, insurance, legal, scheduling, or administrative services, or acting as a common carrier;

- (ii) Participation as a member of a regular military force of a foreign nation by a US person who has been drafted into such a force (see also § 124.2(b) of this subchapter);
- (iii) Training and advice that is entirely composed of general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities;
- (iv) Information technology services that support ordinary business activities not specific to a particular business sector;
- (v) Any lawfully authorized investigative, protective, or intelligence activity of a law enforcement or intelligence agency of the United States or of a territory, possession, State, or District of the United States, including political subdivisions thereof; or
- (vi) Maintenance or repair of a commodity or software.

The new proposed Category IX(s)(3) would control military and paramilitary defense services, as follows:

Assistance, including training or consulting, to a foreign government, unit, or force, or their proxy or agent, that creates, supports, or improves the following, other than as specified in paragraph (s)(3)(iv) of this category:

- (i) The organization or formation of military or paramilitary forces;
- (ii) Military or paramilitary operations, by planning, leading, or evaluation such operations; or
- (iii) Military or paramilitary capabilities through advice or training, including formal or informal instruction.
- (iv) Assistance in paragraphs (s)(3)(i) through (iii) of this category does not include:
 - a. Furnishing of medical, translation, financial, insurance, legal, scheduling, or administrative services, or acting as a common carrier;
 - b. Participation as a member of a regular military force of a foreign nation by a U.S. person who has been drafted into such a force (see also § 124.2(b) of this subchapter); or
 - c. Training and advice that is entirely composed of general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities.

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