

DEPARTMENT OF STATE**22 CFR Parts 120 and 121****[Public Notice: 12259]****RIN 1400-AF29****International Traffic in Arms Regulations: Revisions to Definition and Controls Related to Defense Services****AGENCY:** Department of State.**ACTION:** Proposed rule.

SUMMARY: The Department of State proposes to revise the definition of defense service and the scope of related controls in the International Traffic in Arms Regulations and seeks comment on the proposed revision.

DATES: The Department of State will accept comments on this proposed rule through September 27, 2024.

ADDRESSES: Interested parties may submit comments by one of the following methods:

- *Email:* DDTCCustomerService@state.gov with the subject line: "Regulatory Change: Defense Service Definition".
- *Internet:* At www.regulations.gov, search for this notice, by docket number DOS-2024-0023.

Comments received after that date may be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or information for which a claim of confidentiality is asserted, because any such claim will be deemed waived and comments and/or transmittal emails may be made publicly available. Parties who wish to comment anonymously may do so by submitting their comments via www.regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. In addition to comments directly responsive to this proposed rule, the Department of State specifically requests comments regarding the scope of this rule and the complementary proposed rule from the Bureau of Industry and Security, Department of Commerce published today in the **Federal Register** (RIN 0694-AJ43), with specific attention to any actual or perceived overlap or ambiguity regarding proposed controls as a result of the two agencies' regulations. A summary of this proposed rule may be found at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Director, Office of

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ATTN: Revisions to Definition and Controls Related to Defense Services.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130). The regulations, codified as subchapter M of chapter I, title 22 of the Code of Federal Regulations ("the subchapter") implement certain authorities of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) delegated to the Secretary of State pursuant to Executive Order 13637. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at www.regulations.gov.

The Department of State ("Department") undertook a review led by DDTC of the definition of defense service in the ITAR at § 120.32. This review focused on identifying activities of U.S. persons that (1) provide a critical military or intelligence advantage such that they warrant control under the ITAR and are activities that are not currently subject to the ITAR; or (2) are controlled under the ITAR, but the current control language would benefit from additional clarity. Following the review, the Department proposes a revised definition of defense service to better describe existing controls and the scope of activities it proposes to regulate through the revised definition and also proposes certain additions to the United States Munitions List (USML) at ITAR § 121.1.

While this review was underway, in December 2022, the Bureau of Industry and Security, Department of Commerce (BIS) received expanded statutory authority to control certain activities of U.S. persons pursuant to an amendment to section 4812 of the Export Control Reform Act of 2018 (ECRA), 50 U.S.C. 4801-4852, made as part of the National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263) (NDAA for FY 2023).

Originally authorizing the control of "activities of [U.S.] persons, wherever located, relating to specific . . . foreign military intelligence services," that provision in 50 U.S.C. 4812(a)(2) was amended and broadened in December 2022 to control ". . . foreign military, security, and intelligence services." As a result, and in coordination with other federal departments and agencies and offices, the Departments of State and Commerce are each issuing separate but complementary proposed rules in this

edition of the **Federal Register**: this Department of State proposed rule to amend the definition of defense service and the USML, and a separate Commerce proposed rule to implement its new ECRA authority by amending the U.S. person controls set forth in the Export Administration Regulations, 15 CFR parts 730-774, and making related changes to the EAR's Part 744: Control Policy: End-User and End-Use Based. Additionally, BIS's rule clarifies the scope of BIS's jurisdiction over certain U.S. person activities. By publishing both rules simultaneously and seeking public comment on the proposed changes, DDTC and BIS hope to ensure awareness as to the distinct areas of coverage of U.S. person activities under their respective legal and regulatory authorities.

Background

In considering what to designate as a defense article or defense service on the USML, the State Department primarily focuses on those articles or services that provide a critical military or intelligence advantage such that they warrant control under the ITAR (see § 120.3(b)).

During its recent review of defense services, DDTC identified certain (1) military, (2) cyber, and (3) intelligence services, furnished to foreign persons that are not currently controlled or which are controlled but for which the applicable control language could benefit from additional clarity. The Department now proposes a new definition of defense service, coupled with a detailed articulation of currently and newly controlled services on the USML, along with language that would provide the basis for the regulation of certain proposed new services as defense services. In doing so, the Department intends to provide greater clarity regarding the activities currently controlled and to specifically describe those activities that are proposed for control by this rulemaking. Included in this proposal is specific language regarding the furnishing of intelligence-related assistance that is not directly related to a defense article to certain types of foreign persons (*i.e.*, a foreign unit, force, or government) or their proxies or agents. The Department assessed that these activities warrant and require control equivalent to those of intelligence-related defense articles since such assistance (including training or consulting) similarly furnishes a critical military or intelligence advantage to the foreign person. Review of such activity by the Department for consistency with U.S. foreign policy and national security interests is necessary prior to any furnishing of such services.

Further, the inclusion of the activities in this proposed rule is reflective of the stated aims of AECA § 38(a)(2) (22 U.S.C. 2778(a)(2)) and principles in the United States Conventional Arms Transfer Policy.

Proposed Design and Structure of Amendments

The proposed amendments to the definition of defense service at § 120.32, and additions to the USML, include several key changes. These changes affect the design and structure of the relevant provisions of the ITAR, which, in turn, affect how the USML describes and controls activities falling under the definition of defense service.

First, a proposed revision would amend § 120.32(a)(1) by revising the list of regulated activities currently found in (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.” This revised list moves several activities currently individually specified in (a)(1) (*i.e.*, design, engineering, and manufacture) into parentheticals following defined terms in which they are included. Those activities were folded into the revised definitions of “production” and “development” at § 120.43 by a recent ITAR rule (87 FR 16396, Mar. 23, 2022).

In addition, the revised list of activities includes two new references, “disabling” and “degradation.” The Department proposes these terms to make explicit that the act of harming a military capability through the disabling or degradation of defense articles via any method remains controlled. In assessing non-traditional methods of disrupting a nation’s military capabilities during its review, the Department noted that, while the current definition of defense service includes such activities, advances in technology that facilitate such activities merit explicit reference. The proposed revision clarifies that cyber services, or any other activities, that disable and degrade defense articles, but fall short of total destruction or demilitarization, are included within the definition of defense service at § 120.32(a)(1).

The Department also proposes a clarifying addition to the introductory text of paragraph (a)(1) in order to better describe the scope of activities controlled by the definition. In describing the assistance covered by the paragraph, the Department proposes to

replace the parenthetical “(including training)” with a new clause clarifying that assistance includes training or consulting. In so doing, the Department does not intend to add a new level of control to its existing control of defense services, but rather intends to clarify that it does not treat training to mean only direct instructional activity. The proposed addition would reaffirm that providing the tools or means of furnishing training to a foreign person so that the foreign person may conduct training in lieu of the regulated person is included in the control. Such consulting is not limited to the furnishing of a completed product, but includes assisting in the development of such training.

Second, the proposed amendments would remove current § 120.32(a)(2) as redundant since the furnishing of technical data to a foreign person is already a controlled event described in §§ 120.50 through 120.52. Further, the proposed amendments would remove current paragraph (a)(3). In their stead, these two provisions are replaced by a proposed new paragraph (a)(2) that directs persons to the USML where descriptions of services to be controlled under ITAR are provided. The Department includes a proposed note to § 120.32 directing the regulated community to the new location.

Specifically, the proposed paragraph (a)(2) directs persons to two new proposed USML entries in Category IX that would control defense services related to intelligence and military assistance. The proposed entries differ from the type of defense services described in paragraph (a)(1), which directly relate to defense articles and already have corresponding entries in each USML category (*e.g.*, Category I(i), Category II(k), etc.).

The two new entries are proposed for a currently reserved paragraph (s) of Category IX, and the category is proposed to be renamed “Military Training Equipment, Intelligence Defense Services, and Military Defense Services” to more accurately describe the controls in the category. The Department proposes to reserve paragraph (s)(1) for use as a future entry and to place the new controls in proposed paragraphs (s)(2) and (3) within that category. For purposes of this preamble, the intelligence assistance controlled by paragraph (s)(2) is referred to as “intelligence assistance” and the military and paramilitary assistance controlled by paragraph (s)(3) are referred to by the singular “military assistance.”

The introductory text of proposed new USML Category IX(s)(2) describes

defense services relating to intelligence assistance that do not necessarily involve defense articles. Following the introductory control text of proposed USML Category IX(s)(2), subsequent paragraphs would provide specified carve-outs to the general description of activities described in paragraph (s)(2). Similar carve-out provisions are also proposed to the military assistance control in USML Category IX(s)(3). The Department determined that rather than relying solely on the definition of defense service, it would be better to direct users to the USML to conduct their classification analysis since this approach is similar to how users currently conduct defense article classification analysis, and it allows for a more detailed articulation of certain specific activities meriting ITAR control. Moreover, AECA § 38(a)(1) (22 U.S.C. 2778(a)(1)) provides that defense services, like defense articles, are to be designated on the USML. By adding specific entries in addition to the existing USML paragraphs controlling defense services, including those furnished in connection with a defense article, the Department brings additional clarity to the regulations. Further to that effort, the Department proposes to amend § 120.11, which describes the order of review, to include a proposed paragraph (d) specific to defense services and to redesignate current paragraph (d) as paragraph (e).

As to the objective of the proposed additions to the USML, the Department determined revised and clarified controls are warranted and necessary to address the risks to U.S. national security and foreign policy interests posed by U.S. persons furnishing assistance in intelligence activities. In particular, the Department determined that certain intelligence activities that do not involve defense articles provide a critical military or intelligence advantage such that they warrant and require revised controls under the ITAR.

The proposed USML Category IX(s)(3) describes defense services relating to military assistance that do not necessarily involve defense articles and provides specified carve-outs to the controls. Persons furnishing certain military assistance to foreign persons can cause local and regional instability in a manner equal to or greater than the supply of a tangible article or weapon to a foreign person end-user. The proposed inclusion of certain specific forms of military assistance as a defense service within the USML is intended to provide U.S. persons with clear notice that such activities require authorization as, depending on the circumstances, the activities may be counter to U.S.

national security or foreign policy interests, the stated aims of AECA § 38(a)(2) (22 U.S.C. 2778(a)(2)), Conventional Arms Transfer Policy objectives, or shared interests with our allies and partners. To ensure that the military assistance controls are consistent with ITAR § 120.3(b) and only control those activities that provide a critical military or intelligence advantage, the proposed controls described in Category IX(s)(3) would regulate a higher level of support than front-line combatant activities. The Department notes, however, that although not intended for control in proposed Category IX(s)(3), such activities may be otherwise regulated by other provisions in the ITAR, or by regulations administered by other agencies of the U.S. Government. In conjunction with the addition of this proposed USML entry, the Department is proposing to remove the existing USML entry for military training at current Category IX(e)(3). In so doing, the Department does not intend to narrow the scope of what is controlled by that existing military training entry, but rather aims to bring additional clarity to that control as part of new text proposed as Category IX(s)(3).

The proposed amendments utilize a method of control sometimes known as “catch and release,” which functions to initially describe a broad range of activities as a “catch,” and then specifies certain limited carve-outs as a “release” from the “catch.” As applied here, the catch-and-release design establishes that furnishing certain forms of listed assistance to a foreign person is controlled. Specifically, proposed USML Category IX, paragraphs (s)(2) and (s)(3)(i) through (iii) catch certain activities while paragraphs (s)(2)(i) through (vii) and (s)(3)(iv)(A) through (C) release, or carve out, specific activities that were initially caught. Only assistance that is both “caught” and not “released” by the respective paragraphs is controlled under paragraphs (s)(2) or (s)(3)(i) through (iii). Included in the releases for both intelligence assistance (paragraph (s)(2)(ii)) and military assistance (paragraph (s)(3)(iv)(B)) are activities performed by U.S. persons who have been drafted into the regular military forces of a foreign nation. The Department proposes this inclusion in addition to the existing exclusion at § 124.2(b) from the current definition of defense service so that persons reviewing the USML for controlled activities fully understand which activities are controlled. The exclusion at § 124.2(b), which has been in the

ITAR since 1984 (see 49 FR 47682, Dec. 6, 1984), provides that: “[s]ervices performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.32 of this subchapter.” The Department proposes to include similar provisions within the new paragraph (s) in USML Category IX to preclude any possible confusion by the regulated community, including both persons long aware of the existing § 124.2(b) and persons new to the regulations who may be unfamiliar with the current exclusion, as to whether the Department intends to regulate the activities of draftees. The Department further notes § 124.2(b) applies to the entirety of § 120.32, whereas the defense services described in Category IX(s)(2) and (3) and the specific carve-outs to them, are related to proposed § 120.32(a)(2). By including the carve-outs from the proposed USML paragraphs and a “see” parenthetical directing users to § 124.2(b), the Department endeavors to ensure awareness of the exclusion in light of the proposed new control.

Proposed USML Amendments

Proposed USML Category IX(s)(3) describes defense services relating to military assistance and provides specified carve-outs. Specifically, proposed paragraph (s)(3)(i) controls persons furnishing assistance that creates, supports, or improves the organization or formation of foreign military or paramilitary forces. This text is included to cover assistance in the development and organization of foreign military services (e.g., armies, navies, air forces, etc.) at any stage. Proposed paragraph (s)(3)(ii) controls persons furnishing assistance that creates, supports, or improves military or paramilitary operations by planning, leading, or evaluating all aspects of such operations, including, e.g., logistical support. In contrast to (s)(3)(i), this text is included to cover assistance being provided in the conduct and analysis of military operations by the foreign military services, whether in war or peace. The Department notes that this rule proposes to remove the text of current § 120.32(a)(3) regarding military training, along with the current corresponding reference to military training in Category IX(e)(3). The Department believes that the essential elements of § 120.32(a)(3) would be better situated and described in proposed Category IX(s)(3)(iii). In addition, removal furthers the Department’s aim to better align the definition of defense service at § 120.32

with the definition of defense article at § 120.31. In changing nomenclature from regular or irregular units and forces to the capabilities of a military or paramilitary, the Department aims to provide what it believes are more generally understood terms. “Regular” and “irregular” forces are terms that have been used in the context of international humanitarian law. But illicit actors or unassuming persons may be put on even clearer notice that providing training to create, support, or improve the military or paramilitary capabilities of any kind of unit or force, governmental or not, is a defense service requiring authorization. In this way the focus is on the nature and type of training or advice provided (military or paramilitary capabilities) more than on the recipients, which are now more broadly defined as expressly including proxies or agents of a foreign government, foreign unit, or foreign force. The examples of methods of providing military training now contained in that part of § 120.32(a)(3) beginning with “correspondence courses” are non-exhaustive examples of instruction. The Department believes that those example methods and any other methods of training need not be listed and does not retain that text in the proposed paragraph (s)(3)(iii), even though they would still be controlled as either formal or informal instruction, advice, or other forms of training.

Proposed USML Category IX(s)(2) describes furnishing intelligence assistance for a foreign government, unit, or force, or their proxy or agent, and training a foreign government, unit, or force, or their proxy or agent, to furnish such services, while providing specified carve-outs to the controls. The creation of a separate entry in proposed paragraph (s)(2) separates the control text governing intelligence assistance from the control text describing military assistance. It is intended to provide clearer notice to the regulated community, and in particular to U.S. persons with relevant experience, that the ITAR regulates services related to intelligence activities, regardless of nexus to a defense article. The text of proposed paragraph (s)(2) for intelligence assistance uses the same descriptors found in proposed paragraph (s)(3) for military assistance, but also includes “providing analysis for” and “participating in.” The phrase “providing analysis for” is included since conducting an intelligence analysis can provide a critical advantage even without involvement in intelligence collection or other intelligence operations. “Participating

in” is included to make clear persons hired and assisting in an intelligence operation on behalf of a designated foreign government, unit, or force, or their proxy or agent, are controlled activities.

Second, including “training or consulting” in the text of proposed paragraph (s)(2) allows the Department to specifically and explicitly describe on the USML the conduct of U.S. persons (or foreign persons in the United States) who furnish any described defense service to enable a foreign government, unit, or force, or their proxy or agent, to conduct intelligence activities themselves. The Department assesses regulating assistance on tactics, techniques, procedures, and other types of training that enables the intelligence activities a foreign government, unit, or force, or their proxy or agent, is consistent with the aims and authority of the ITAR and the AECA. Again, the Department notes this text would regulate assistance to any kind of foreign unit or foreign force, regardless of government affiliation, as well as to their proxies or agents.

The listed assistance activities identified in proposed paragraph (s)(2) are caveated by the inclusion of “for compensation,” thereby limiting the control to those services that are provided commercially or in a professional capacity. Compensation in this context need not be limited to financial compensation, but would require some measurable response from the recipient in exchange for the service. This could include a wide of range compensation for example, from gifts and or lodging, to goods or services, political favors, legislative or legal relief, etc. Activities of the U.S. Government are generally not included within the furnishing of assistance for compensation. This text is included to ensure the ITAR does not control non-critical intelligence assistance provided on a volunteer basis (and not for hire or compensation). Further, it is not intended to control assistance of a type that ordinarily occurs in today’s technically advanced society. For example, the Department does not intend for the activities of hobbyists or casually interested persons forwarding or commenting on open-source, publicly available satellite imagery relevant to the invasion of Ukraine, to be considered the furnishing of a defense service.

While the “for compensation” language is proposed as an objective criterion to provide clarity and to help ensure the ITAR does not unintentionally control non-critical intelligence assistance provided on a

volunteer basis (and not for compensation), suggesting a less-concerning quality of assistance, the Department would consider additional alternative controls. Any such alternative would need to provide notice to the public of clear, objective standards to control the kind of intelligence services proposed as Category IX (s)(2), without inadvertently capturing more activities than are necessary.

Therefore, the Department seeks input on the clarity and scope of the “for compensation” criterion. Concurrently, the Department also seeks input as to additional control criteria in paragraph (s)(2) that could provide sufficient notice, as well as objective standards, to control assistance that clearly provides a critical intelligence advantage, but which does not turn on compensation. This could include, as but one example, intelligence assistance that was asked-for or otherwise solicited by a foreign person, directly or indirectly. The Department also welcomes input on the six carve-outs or exclusions as to their clarity, and whether other exclusions could serve to clearly and objectively narrow the scope of the proposed or any additional controls.

Carve-Outs to Intelligence Assistance

Proposed paragraphs (s)(2)(i) through (vi) would carve out six specific sets of activities from the proposed controls on intelligence assistance described in the introductory text to proposed paragraph (s)(2). Three of the carve-outs to intelligence assistance activities, those in proposed paragraphs (s)(2)(i) through (iii), are identical to the three military assistance activities carve-outs from proposed paragraphs (s)(3)(iv)(A) through (C) and are further discussed in the preamble discussion of those paragraphs below.

The fourth carve-out related to intelligence assistance is set forth in proposed paragraph (s)(2)(iv). Here, the Department proposes to carve out information technology services that are ordinarily provided to allow any business entity to operate internally as a modern business environment, without a sector-specific specialization. These would include, for example, services related to IT infrastructure, composed of the hardware (including switches, routers, and servers) and software (including operating systems and basic network security applications) that enable an organization to run specialized software applications. IT infrastructure is not necessarily collocated with the organization, as it may include cloud infrastructure such as remote data centers, edge computing,

and various “as a service” (SaaS) models.

The fifth carve-out, proposed in paragraph (s)(2)(v), makes clear that the ITAR does not interfere with an otherwise lawful activity of a U.S. local or federal law enforcement or intelligence agency. This carve-out is similar to one found in 18 U.S.C. 1030(f).

The sixth carve-out, proposed in paragraph (s)(2)(vi), focuses the expanded defense service controls in paragraph (s)(2), and intends to avoid imposing a duplicative export licensing requirement for the activities described, since they are already regulated or proposed for regulation under the ITAR or EAR to the destinations of concern.¹ The Department further notes that, similar to the defense service definition at § 120.32(a)(1), the mere act of exporting, reexporting, or transferring (in-country) a commodity, software, technical data, or EAR technology does not constitute a defense service in the context of (s)(2). For items subject to the EAR, the Department assesses that the repair or maintenance of that commodity or software (when isolated from a defense article) should similarly be subject to the EAR, even when caught in (s)(2), since an EAR authorization could be used to secure a replacement in lieu of performing the repair or maintenance. In contrast, the repair or maintenance of commodities or software subject to the ITAR is already regulated via ITAR § 120.32(a)(1), including when repairing an EAR commodity or software incorporated into a defense article.

Carve-Outs to Military Assistance

With respect to proposed controls over military assistance in proposed paragraphs (s)(3)(i) through (iii), proposed paragraph (s)(3)(iv) provides three specific carve-outs. The activities carved out by (s)(3)(iv)(A) are similar in nature to the brokering activity carve-outs already found in part 129. The activities to be carved out by proposed paragraph (s)(3)(iv)(B) make certain that the activities of U.S. persons drafted into the regular military forces of a foreign nation are not controlled by this section. This language is consistent with the text of the existing language at ITAR § 124.2(b). Finally, proposed paragraph

¹ While the ITAR and EAR generally use similar terminology, there are certain exceptions. For example: where the ITAR speaks of exports, reexports, and retransfers (§§ 120.50 through 120.52), the EAR uses export, reexport, and transfer (in-country) (§§ 734.13, 734.14, and 734.16); the ITAR uses “articles,” and the EAR uses “items,” to describe commodities and software. EAR terms are used here when used in specific relation to those regulations and not the ITAR.

(s)(3)(iv)(C) carves out training and advice entirely composed of general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities.

Regulatory Analysis and Notices

Administrative Procedure Act

This rulemaking involves a military or foreign affairs function of the United States under 5 U.S.C. 553(a). Nevertheless, and without prejudice to this determination, the Department has elected to seek public comment on this proposed rule.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment provisions of 5 U.S.C. 553(b), it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, as amended by Executive Orders 13563 and 14094, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Although this rule may impose

additional regulatory requirements or obligations, the Department believes that costs associated with this rule will be minimal because, to its knowledge, the types of new activities proposed to be regulated are usually undertaken in conjunction with other services involving a defense article that already require a license or other approval. Thus, the Department assesses the incremental cost of compliance to be minimal for most exporters. Moreover, based on confidential submissions to DDTC, the Department believes that when such activities are undertaken, typically only a limited number of entities would aim to provide such services and seek licenses or other approvals for them. Therefore, the Department expects a low number of license applications from only a small number of entities would result if these controls were to be promulgated in a final rule. Should commenters believe they may be subject to new controls on activities they already provide or plan to provide, the Department welcomes that specific feedback to better understand the costs and benefits of the proposed controls. The proposed rule may also provide other benefits in its clarification of several activities that are currently controlled and consequently may reduce regulatory uncertainty. This too is based on confidential submissions to DDTC via commodity jurisdiction requests, advisory opinions, and voluntary disclosures. The proposed rule is also expected to strengthen the foreign policy and national security of the United States as the rule would clarify both the currently regulated and newly identified activities that provide a critical military or intelligence advantage, providing notice to the regulated community of the Department's oversight of these services. Additionally, when authorization is sought for these services, the information provided on the purpose and kind of such services, including which foreign persons who would receive the services, may assist the Department in better assessing the effects of these activities on the complex considerations of our foreign affairs. This rule has been designated a "significant regulatory action" by the Office of Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth above and under the authority of 22 U.S.C. 2778, the Department of State proposes to amend title 22, chapter I, subchapter M, parts 120 and 121 as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Amend § 120.11 by redesignating paragraph (d) as paragraph (e) and add new paragraph (d) to read:

§ 120.11 Order of review.

* * * * *

(d) *Defense service.* Defense services described in § 120.32(a)(1) are controlled under the relevant paragraph of each USML category that includes defense services "directly related" or "relating" to defense articles as described therein. For defense services described in § 120.32(a)(2) that are not controlled in the defense article-specific defense services paragraphs, see USML Category IX(s)(2) and (3) in § 121.1 of this subchapter.

■ 3. Section 120.32 is revised to read as follows:

§ 120.32 Defense service.

(a) *Defense service* means:
(1) The furnishing of 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; or

(2) The furnishing of assistance, including training or consulting, to foreign persons, regardless of whether a defense article is involved, as described in USML Category IX(s)(2) or (3) in § 121.1 of this subchapter.

Note to paragraph (a): For military training previously described in this paragraph, see paragraph (a)(1) and USML Category IX(s)(2) and (3).

(b) [Reserved]

PART 121—THE UNITED STATES MUNITIONS LIST

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 5. Amend § 121.1, by revising the heading to Category IX, revising paragraph (e), and adding new paragraph (s) to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category IX—Military Training Equipment, Intelligence Defense Services, and Military Defense Services

* * * * *

(e) Technical data (see § 120.33 of this subchapter) and defense services (see § 120.32 of this subchapter):

(1) Directly related to the defense articles enumerated in paragraphs (a) and (b) of this category; or

(2) Directly related to the software and associated databases enumerated in paragraph (b)(4) of this category even if no defense articles are used or transferred.

* * * * *

(s) Defense Services, as follows:

(1) [Reserved]

(2) 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 U.S. 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.

(3) 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 evaluating 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.

The Under Secretary, Arms Control and International Security, Bonnie D. Jenkins, having reviewed and approved this document, has delegated the authority to electronically sign this document to Zachary A. Parker, Director, Office of Directives Management, for purposes of publication in the **Federal Register**.

Zachary A. Parker,

*Director, Office of Directives Management,
Department of State.*

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 732, 734, 736, 740, and 744

[Docket No. 240712–0193]

RIN 0694–AJ43

End-Use and End-User Based Export Controls, Including U.S. Persons Activities Controls: Military and Intelligence End Uses and End Users

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule, with request for comments.

SUMMARY: The Department of Commerce, Bureau of Industry and Security (BIS), seeks public comment on proposed changes to existing restrictions under the Export Administration Regulations (EAR) on military and intelligence end uses and end users and related U.S. persons activities controls, as well as the proposed addition of a military-support end-user control. These proposed revisions and additions to the EAR’s end-use, end-user, and “U.S. persons” activity controls would implement expanded Export Control Reform Act of 2018 (ECRA) authority to control certain “U.S. persons” activities under the EAR. Specific to the EAR’s “U.S. persons” activities controls, BIS is proposing amendments to control ‘support’ furnished by “U.S. persons” to military end users and military-production activities, as well as intelligence end users that are not otherwise already regulated under or prohibited by U.S. law. In addition, BIS is proposing to revise the definition of ‘support’ set forth in the EAR’s “U.S. person” activity control provision in response to requests by the public for clarification. The revisions and additions, along with clarifications, to end use, end user, and “U.S. persons” activity controls under the EAR, would further the national security and the foreign policy of the United States.

DATES: Comments must be received by BIS no later than September 27, 2024.

ADDRESSES: Comments on this rule may be submitted to the Federal rulemaking portal (www.regulations.gov). The *regulations.gov* ID for this rule is: BIS–2024–0029. Please refer to RIN 0694–AJ43 in all comments.

All filers using the portal should use the name of the person or entity submitting the comments as the name of their files, in accordance with the instructions below. Anyone submitting