



September 25, 2024

*Via regulations.gov*

Sarah Heidema  
Director, Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
U.S. Department of State

*Re: Comments on International Traffic in Arms Regulations: Revisions to Definition and Controls Related to Defense Services, 89 Fed. Reg. 60,980 (July 29, 2024)*  
RIN 1400-AF29, DOS-2024-0023

Dear Ms. Heidema:

The Association of University Export Control Officers (“AUECO”) respectfully submits this letter in response to *International Traffic in Arms Regulations: Revisions to Definition and Controls Related to Defense Services, 89 Fed. Reg. 60,980 (July 29, 2024)* (the “Proposed Rulemaking”). We are grateful for the opportunity to provide feedback on these important regulatory amendments that could impact university activities, including international education, research collaborations, and federally sponsored projects.

The proposed changes to the definition and controls related to defense services provide greater clarity as to which activities are and are not controlled. We believe these revisions are beneficial to the regulated community and thank the Directorate of Defense Trade Controls (“DDTC”) for its work. However, a few elements of the Proposed Rulemaking applicable to the many activities that occur under the umbrella of university education and research are ambiguous, and AUECO encourages DDTC to clarify and expand certain criteria in the final rulemaking.

AUECO is an association of over 500 export control professionals with compliance responsibilities at over 200 institutions of higher education and related organizations within the United States. AUECO is committed to monitoring changes in the administration of export control laws and regulations that may affect the unique nature of higher education and academia, including international academic and research collaborations.

**[Request for Clarity and Confirmation on Amendments to Paragraph 120.32\(a\).](#)**

The Proposed Rulemaking would remove current paragraph 120.32(a)(2), which addresses furnishing technical data to foreign persons – an event already covered in sections 120.50 through 120.52 – as well as current paragraph 120.32(a)(3). The amendments would replace both (a)(2) and (a)(3) with a new paragraph (a)(2) that directs readers to the U.S. Munitions List (“USML”), where descriptions of certain services to be controlled under the ITAR would be provided. AUECO welcomes the removal of redundancy in the “technical

data” paragraph and supports DDTC’s approach of directing users to the USML to conduct classification analysis for military and intelligence defense services.

The preamble under “Carve-Outs to Intelligence Assistance” confirms that for items subject to the Export Administration Regulations (“EAR”), the repair or maintenance of such items (when isolated from a defense article) remains subject to the EAR. However, “the repair or maintenance of commodities or software subject to the ITAR is already regulated via paragraph 120.32(a)(1), including when repairing an EAR commodity or software incorporated into a defense article.” AUECO recommends confirmation, perhaps in the form of an FAQ document, that repairing a commodity or software subject to the EAR in good faith, and with no knowledge of a foreign person’s intent to integrate or reintegrate the item into a defense article, is not a defense service.

#### Request for Clarity or Confirmation on Proposed Category IX(s) Changes.

- *Defense Services defined under proposed Category IX(s)(2) warrant further clarification or confirmation to safeguard academic freedom and avoid controlling low-risk activities.*

A clear definition for “intelligence activities” is warranted, largely to distinguish between clandestine operations and work product vs. open-source collection and analyses for civilian, governmental, economic, political, or other research in similar disciplines. The Proposed Rulemaking confirms that publicly available information that could be used in intelligence activities is not considered a defense article; however, proposed Category IX(s) expressly governs activities that need not involve defense articles. Given the complexities and diversity of “intelligence activities,” the relative low risk posed by published or freely publishable information, and implications for rights of free expression protected by the First Amendment, a definition of “intelligence activities” that explicitly excludes services using only open-source information would be welcome. Such clarification would allow both regulators and the regulated community to focus compliance and enforcement resources on high-risk intelligence functions of genuine national security concern without unduly limiting open research and other activities that benefit the public.

Similarly, AUECO respectfully recommends that “proxy or agent” be defined or made the subject of additional guidance. This could take the form of (1) clarification in the ITAR or FAQs that a substantial and/or direct relationship relevant to “intelligence activities” with the end-user organization is required for a “proxy” or “agent” connection; or (2) support in identifying “proxies” or “agents” through published resources or an expedited service analogous to the Advisory Opinion process.

The inclusion of “for compensation” as a factor to distinguish material, higher-risk support for intelligence activities generally from the low-sensitivity and often constitutionally-protected conduct of writers, advocates, volunteers, amateurs, and others is sensible. However, it may nevertheless inadvertently capture some low-risk activities in specific cases in the absence of a precise definition for “intelligence activities” as described above. Because the concept is a material element of proposed Category IX(s)(2), we recommend that DDTC consider providing a definition or other guidance as to the precise meaning of “compensation”—a term that can include different things in different regulatory contexts.

- *Proposed Category IX(s) should extend exclusions under subsections (2)(i), (2)(iii), and (3)(iv)(C) to include routine academic activities, as well as non-STEM fields.*

AUECO strongly applauds DDTC’s listing of “training and advice that is entirely composed of general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities” as a “release” or carve-out from both IX(s)(2) and IX(s)(3). However, we recommend extending the carve-out

beyond certain STEM principles to encompass routine academic activities (*e.g.*, catalog courses, student exchanges, fundamental research) and non-STEM fields in the humanities, social sciences, law, business, and so on. Specifically excluding from “defense service” all low-risk, non-technical areas of study and research of little-to-no national security import, such as languages, economics, military history, political science, behavioral economics, and business and management, would help the academic community more effectively conduct classification analyses and reduce the number of unnecessary inquiries and license/agreement applications to DDTC.

Additionally, AUECO appreciates the carve-out for providing medical and translation services. Clarification is requested as to whether this provision is limited to direct services provided, or also applies to the provision of medical training (*e.g.*, EMT training) or language acquisition. (Such clarification might be furnished via the revised carve-out for academic activities described above.)

### Conclusion.

AUECO believes the proposed revisions will be beneficial to national security and the regulated community, and makes several requests. These requests intend to further calibrate the ITAR to govern high-risk operations and clarify carve-outs to avoid regulating low-risk, commonplace activities undertaken at universities and other organizations. Clear carve-outs will reduce inefficiencies associated with assessing academic research initiatives, the vast majority of which are unlikely to be of any assistance to non-U.S. defense or intelligence organizations. Such carve-outs will also reduce the burden of unnecessary inquiries and license applications on DDTC.

Thank you for this opportunity to comment on the Proposed Rulemaking.



**Scot Allen**

Chair

Association of University Export Control Officers (AUECO)



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*COGR endorses this AUECO comment letter:*



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