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CLIENT ALERT

Anticipated ITAR Rulemaking Developments for 2024 and 2025

July 10, 2024

Updated: October 29, 2024 (Updates in [blue](#) text)

The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) recently updated its [list](#) of planned rulemaking concerning the International Traffic in Arms Regulations (ITAR) and U.S. Munitions List (USML). The listing is part of the latest Unified Agenda of Regulatory and Deregulatory Actions, which the U.S. government publishes semiannually, usually in December and June. That agenda identifies rulemaking that may occur over the next 12 months and other long-term actions. This article summarizes DDTC's updated rulemaking list.

Anticipated Developments

DDTC's anticipated rulemaking list includes 17 intended actions:

Final Rule Regarding AUKUS. DDTC expects to issue a [final rule](#) to implement a licensing exemption and expedited review policy for the trilateral security partnership between Australia, the United Kingdom, and the United States (AUKUS). DDTC published the [proposed rule](#) on May 1, and many commenting parties [sought](#) significant changes to the proposal. The State Department faces an August deadline to certify that Australia and the United Kingdom have export control systems comparable to the United States or to decide whether to seek another 120-day extension. (Update: DDTC [published the interim final rule, which is effective on September 1, and will accept public comments until November 18.](#))

Proposed Revisions to Defense Services. DDTC plans to publish a [proposed rule](#) regarding defense services that, on November 5, it submitted for final interagency clearance to approve its publication in the Federal Register. Specifically, the proposed rule involves "revisions to definitions and controls related to defense services." This proposal will be the fourth proposed rule by DDTC concerning defense services. It published the [first](#) proposed rule in 2011, the [second](#) in 2013, and the [third](#) in 2015. Each time, DDTC conceded that the current rule is "overly broad." (Update: On July 29, DDTC [published the proposed rule for defense services and received](#) at least 20 public comments.)

Final Rule Clarifying Non-Controlled Events. DDTC intends to issue a [final rule](#) that will amend ITAR § 120.54 to add two activities that are not exports, reexports,

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retransfers, or temporary imports; on June 6, it submitted this rule for final interagency clearance to approve its publication in the Federal Register. As explained in the [proposed rule](#), subject to specified conditions, the two activities cover “the transfer of a foreign defense article originally imported into the United States that has since been exported out of the United States” and “the taking of defense articles outside a previously approved country by the armed forces of a foreign government or United Nations personnel on a deployment or training exercise.” Separately, DDTC plans to [finalize](#) the 2019 interim final rule for ITAR § 120.54. (Update: On August 15, DDTC [published](#) the final rule, which is effective on September 16.)

Proscribed Country List Revisions. DDTC plans two updates to the proscribed country list in ITAR § 126.1. First, DDTC intends to issue a [final rule](#) to amend the ITAR “to reflect recently adopted United Nations Security Council Resolutions concerning the Democratic Republic of the Congo.” Second, DDTC plans to issue a [correction rule](#) regarding its previous final rule that added Nicaragua to the proscribed country list. This correction rule probably does not concern Nicaragua but more likely places Cambodia's listing back on the table under paragraph (d)(2); while still specified in paragraph (o), Cambodia was removed from that table during the [rulemaking concerning](#) Nicaragua back in March.

USML Revisions. In addition to the proposed rule concerning defense services, DDTC intends to issue the following seven rulemakings concerning the USML:

- An [interim final rule](#) to revise and exclude “entries in the [USML] that do not warrant inclusion, and to add entries for critical and emerging technologies that warrant inclusion.” This update will also revise Category XXI “to limit the items categorized in” that category. On June 21, DDTC submitted this rule for final interagency clearance to approve its publication in the Federal Register.
- A [proposed rule](#) to revise several areas of Categories IV and XV “to describe more precisely the articles warranting control on the USML.” This proposed rule is in response to public comments the agency received from the [Advanced Notice of Proposed Rulemaking](#) from March 2019. (Update: On October 23, DDTC [published](#) the proposed rule and will accept public comments until November 22.)
- A [proposed rule](#) concerning circuit boards and semiconductors “to revise paragraphs (c)(1) through (4) of Category XI of the [USML] to describe more precisely the articles warranting control on the USML.”
- A [final rule](#) regarding Category XVI “to better harmonize [the USML] with the Department of Energy part 810 regulations and ensure that all items that provide the United States with a critical military or intelligence advantages are listed on the [USML] and remain subject to U.S. Government export controls at all times.”

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- A [proposed rule](#) that will modernize the USML and Supplement No. 1 to Part 126 by standardizing the “language and structure across Categories and entries for purposes of consistency, clarity, and improved ease of use.”
- A [final rule](#) that will address the public comments the agency received for the USML revisions to Categories IV, V, VIII, XI, and XV from the [interim final rule](#) in 2018.
- An [interim final rule](#) that will “clarify and correct recent revisions to the [USML].”

Final Rule to Increase Registration Fees. DDTC expects to issue a [final rule](#) to increase the ITAR’s registration fees following its publication of the [proposed rule](#) on April 24 and consideration of the [public comments](#) it received. The last fee change occurred in [2008](#), with other prior changes in 2004, 1997, and 1985. The ITAR’s registration fees were the subject of [litigation](#) in 2015 concerning DDTC’s ability to raise those fees, but that case did not address the merits because the plaintiff lacked standing.

Final Rule Concerning Technical Data Releases to Foreign Persons. DDTC plans to issue a [final rule](#) to change how the ITAR handles “deemed exports” and “deemed reexports” of technical data to foreign persons so there is “a release only to any countries in which that foreign person currently holds citizenship or permanent residency.” The ITAR currently controls such releases “to all countries in which the foreign person has held or holds citizenship or holds permanent residency.” DDTC issued a [proposed rule](#) regarding this rulemaking in February 2022.

Proposed Rule Concerning Regular Employees. DDTC intends to issue another [proposed rule](#) to revise the meaning of a regular employee within ITAR § 120.64. Specifically, the proposed revisions would update the definition by allowing “subject persons to work remotely” and clarifying “the contractual relationships that meet the definition of regular employee.” The [first proposed rule](#), published in May 2021, received several public comments [critical](#) of the proposed approach to distinguishing between contract employees based on the duration of employment.

Final Rule for Corrections and Clarifications. DDTC expects to build upon the initial Part 120 consolidation effort with a [final rule](#) “to better standardize language, form, style, and structure throughout the regulations, as well as to make certain clarifications and corrections.” It will also fix “various administrative and typographical errors.” DDTC calls this rule “ITAR Reorg 1.5.”

Long-Term Developments

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In addition to the above list, DDTC identified two long-term regulatory actions that the agency is planning but does not expect to take action on within the next 12 months:

Proposed Rule Consolidating Licensing Provisions and Exemptions. DDTC plans to issue a [proposed rule](#) involving the consolidation of ITAR Parts 123, 124, and 125. That consolidation will place most licensing exemptions in Part 125, while Part 123 will focus on the licensing requirements and Part 124 on the licensing process. The Defense Trade Advisory Group (DTAG) recently [reviewed](#) this consolidation process in October 2023.

Final Rule Concerning the Personal Protective Equipment (PPE) Exemption. DDTC is preparing a [final rule](#) “to expand the list of personal protective equipment covered by the exemption in ITAR section 123.17.” DTAG [reviewed](#) this exemption in May 2021 and submitted proposed revisions based on its recommendations.

Next Steps

Regulated parties affected by or interested in these rulemaking developments should monitor their progress and consider submitting public comments when the applicable notice appears in the Federal Register.

Contact Information



[Christopher B. Stagg](#)

(202) 771-7579 | chris@stagg.law

With the unique experience of writing and heavily influencing U.S. export control laws, companies turn to Christopher as their go-to counsel for high-stakes situations and cutting-edge legal strategies. Christopher also notably has the rare distinction of successfully litigating export control issues in federal court, leading to the only appellate decision to reject agency interpretations of the ITAR. Additionally, Christopher is the co-chair of the American Bar Association’s export controls and economic sanctions committee.

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