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## Proposed Amendment to ITAR Clarifies Definition of ‘Defense Services’

The U.S. Department of State recently issued a proposed rule clarifying the thorny definition of “defense services” that are subject to the International Traffic in Arms Regulations (ITAR). The Department of State is accepting public comments to the proposed rule until June 13, 2011.

Historically, the definition of “defense services” has presented interpretation challenges for companies and individuals wishing to train non-U.S. persons in such varied activities as operation or use of defense articles, integration of software or components into ITAR-controlled hardware, firearms certification for armed security forces, and tactical or field medic training. The proposed definition provides much-needed clarity and focus to the existing overly-broad definition of defense services, as follows.

Highlights of Proposed ITAR Revisions to ‘Defense Services’ Definition	
Defense Services	NOT Defense Services
Assistance and training to foreign persons performed using information other than public domain data in activities such as the design, development, testing of defense articles.	Assistance and training using public domain data only.
Assistance and training to foreign persons performed using information other than “public domain data” in depot-level repair or maintenance of defense articles. (New definitions elaborate on the distinction between basic level, intermediate level and depot level repair and maintenance.)	Training in the basic operation (functional level) or basic maintenance of a defense article.
Assistance in integrating components (even foreign-origin) that are subject to either the ITAR or the Department of Commerce dual-use export controls into an end-item or system that is subject to the ITAR.	Testing, repair, or maintenance of an item subject to the Department of Commerce dual-use export controls that has been incorporated or installed into a defense article.
Training or providing advice to foreign units and forces, regular and irregular, regardless of whether technical data is transferred to a foreign person, including formal or informal instruction of foreign persons in the United States or abroad by any means including classroom or correspondence instruction, conduct or evaluation of training and training exercises, in the employment of defense articles.	Providing assistance (including training) in medical, logistical (other than maintenance), or other administrative support services to or for a foreign person.
Conducting direct combat operations for or providing intelligence services to a foreign person directly related to a defense article.	Providing law enforcement, physical security or personal protective training, advice, or services to or for a foreign person, using only public domain data.

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