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Commerce Proposes Restrictions on U.S. Persons' Support for Foreign Military, Intelligence, and Security Services and Controls to Protect National Security and Human Rights

New Rules Implement Provision from Fiscal Year 2023 Defense Authorization Law

WASHINGTON, D.C. – Today, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published proposed rules seeking public comment on enhanced restrictions on exports, reexports, or support to military or intelligence end users and end uses in countries of concern, consistent with the Fiscal Year 2023 National Defense Authorization Act (NDAA). These rules complement proposed revisions, also published today, regarding the scope of defense services controlled by the Department of State's Directorate of Defense Trade Controls (DDTC) pursuant to the International Traffic in Arms Regulations (ITAR). We encourage public comment on today's proposed rules, which include expanding restrictions against exporting items to, or providing support for, military or intelligence services in countries of concern.

"We must prevent hack-for-hire business models from circumventing our human rights-based export controls, such as those on cyber-intrusion tools," said **Assistant Secretary of Commerce for Export Administration Thea D. Rozman Kendler**. "Today, we are proposing enhanced controls on activities supporting foreign police and security services, including those known to violate human rights, as well as new controls on facial recognition technologies that can enable mass surveillance."

The proposed BIS rules build on existing Export Administration Regulations (EAR) restrictions on U.S. persons¹ implement a provision of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023,² originally authored via an amendment by Senator Ron Wyden (D-OR)³. These rules propose to implement the broadest expansion of presidential export control authority since the Export Control Reform Act (ECRA) was signed in August 2018. Specifically, as expanded by the NDAA for FY 2023, ECRA provides BIS with the authority to impose controls

¹ [15 CFR 772.1 "U.S. Person"](#)

² [National Defense Authorization Act for Fiscal Year 2023, Sec. 5589 \(b\),
https://www.congress.gov/bill/117th-congress/house-bill/7776/text.](https://www.congress.gov/bill/117th-congress/house-bill/7776/text)

³ [https://www.congress.gov/amendment/117th-congress/senate-amendment/5915/text.](https://www.congress.gov/amendment/117th-congress/senate-amendment/5915/text)

on the activities of U.S. persons, wherever located, relating to foreign military services, foreign intelligence services, and foreign security services. In amending ECRA in this manner, Congress sought to prevent U.S. persons from assist in foreign military, intelligence, and security services that threaten international peace and stability or spy on dissidents, journalists, and American citizens.

The specific controls proposed in today's rules include:

- **U.S. Persons' Activity Controls:** Expanded restrictions on U.S. persons' support activities regarding end uses and end users of concern, including facilitating the acquisition of certain foreign-origin items by military, intelligence, and security services of concern, as well as performing maintenance, repair, and overhaul of such foreign-origin items.
- **End-Use and End-User Controls:** Expanded restrictions to apply to all items subject to the EAR when destined to the armed forces or national guard of countries subjected to a U.S. arms embargo⁴, as well as civilian or military intelligence agencies (*i.e.*, intelligence end users) of over 40 countries of concern. Such controls are also proposed to apply to all items on the Commerce Control List when destined to foreign-security end users (*e.g.*, police and security agencies) or military-support end users (*e.g.*, defense contractors) in countries subject to a U.S. arms embargo.
- **Item Controls:** New restrictions on the export of certain facial recognition technologies that can enable mass surveillance to protect and promote human rights.

The controls proposed today complement controls maintained by other federal agencies, including controls on defense articles and services administered by DDTC pursuant to the Arms Export Control Act and the ITAR, as well as restrictions on U.S. persons' services maintained by the Department of the Treasury's Office of Foreign Assets Control under various sanctions programs. Under the proposed rules, U.S. persons would not be required to obtain a license from BIS to engage in activities regulated by another federal department or agency or required in furtherance of defense services authorized by DDTC.

Additional Information:

The text of the proposed rules is available on the Federal Register's website [HERE](#) and [HERE](#). BIS is inviting public comments, which are due 60 days after publication. Stakeholders are encouraged to submit their feedback by the deadline to ensure that the final provisions reflect broad industry and public input. You may submit comments for the military, intelligence, and military support end user/use rule by identified docket number BIS-2024-0029 or RIN 0694-AJ43. For the foreign security end user rule, the identified docket number is BIS-2023-0006 or

⁴ [Such controls also apply to Macau, a territory of the People's Republic of China \(PRC\), which is a country subject to a U.S. arms embargo.](#)

RIN 0694-AI35. All comments must be submitted through the Federal eRulemaking Portal:
<https://www.regulations.gov>.