



[Billing Code 4710-25]

**DEPARTMENT OF STATE**

**22 CFR Part 126**

**[Public Notice: 8943]**

**RIN 1400-AD73**

**Amendment to the International Traffic in Arms Regulations: Policy on Exports to Vietnam**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is revising the International Traffic in Arms Regulations (ITAR) to reflect a change in its policy on exports to Vietnam.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; e-mail [DDTCPublicComments@state.gov](mailto:DDTCPublicComments@state.gov).  
ATTN: Regulatory Change, Exports to Vietnam.

**SUPPLEMENTARY INFORMATION:** The Department has determined that is in the best interests of U.S. foreign policy, national security, and human rights concerns that exports of lethal defense articles and defense services to Vietnam may be authorized on a case-by-case basis when in support of maritime security and domain awareness.

**REGULATORY ANALYSIS AND NOTICES**

*Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the

United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(a)(1). Since the Department is of the opinion that this rule is exempt from 5 U.S.C 553, it is the view of the Department that the provisions of Section 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy toward Vietnam, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for this reason, the rule is effective upon publication.

*Regulatory Flexibility Act*

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rulemaking has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*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 rulemaking 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 Order 12866*

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Order 12988*

The Department of State has reviewed this rulemaking in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13175*

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs

on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the provisions of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

For the reasons set forth above, 22 CFR part 126 is amended as follows:

**PART 126 – GENERAL POLICIES AND PROVISIONS**

1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Sections 7045 and 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

2. Section 126.1(l) is revised to read as follows:

**§ 126.1 Prohibited exports, imports, and sales to or from certain countries.**

\* \* \* \* \*

(l) *Vietnam*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Vietnam, except that a license or other approval may be issued, on a case-by-case basis, for:

- (1) Lethal defense articles and defense services to enhance maritime security capabilities and domain awareness;
- (2) Non-lethal defense articles and defense services; or,

(3) Non-lethal, safety-of-use defense articles (e.g., cartridge actuated devices, propellant actuated devices and technical manuals for military aircraft for purposes of enhancing the safety of the aircraft crew) for lethal end-items.

Note to paragraph (1). For non-lethal defense end-items, no distinction will be made between Vietnam's existing and new inventory.

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Rose E. Gottemoeller,  
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Department of State.

[FR Doc. 2014-26632 Filed 11/07/2014 at 8:45 am; Publication Date:  
11/10/2014]