



4710-25

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 10306]

RIN 1400-AE51

Amendment to the International Traffic in Arms Regulations: Addition of South Sudan

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to include reference to South Sudan in its regulations on prohibited exports, imports, and sales to and from certain countries, and to update defense trade policy toward South Sudan by applying a policy of denial on the export of defense articles and defense services to South Sudan, except as otherwise provided. This amendment reflects a policy determination made by the Secretary of State.

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

FOR FURTHER INFORMATION CONTACT: Ms. Engda Wubneh, Foreign Affairs Officer, Office of Defense Trade Controls Policy, U.S. Department of

State, telephone (202) 663-2816, or e-mail *DDTCResponseTeam@state.gov*.

ATTN: Regulatory Change, ITAR Section 126.1 Update 2017.

SUPPLEMENTARY INFORMATION: In response to the escalating crisis in South Sudan, the Secretary of State has determined that it is in the best interests of U.S. foreign policy to restrict, with certain exceptions, the export of defense articles and defense services to South Sudan in order to reflect the U.S. government's opposition to the trade of arms to South Sudan and its contribution to the conflict and humanitarian crisis, to promote the cessation of hostilities, and to reinforce international unity in addressing the South Sudan crisis by aligning the United States with existing restrictions on certain exports to South Sudan by the European Union. This action requires the Department to amend ITAR § 126.1(d)(2) to include South Sudan in the list of countries to which a policy of denial applies, and to add a new paragraph (w) to specify the exceptions to the policy of denial for which licenses and other approvals to South Sudan may be approved on a case-by-case basis. Further, in accordance with ITAR § 129.7, no broker, as described in ITAR § 129.2, may engage in or make a proposal to engage in brokering activities subject to the ITAR that involve South Sudan without first obtaining the approval of the Directorate of Defense Trade Controls.

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. Since this rule is exempt from 5 U.S.C. 553, the provisions of § 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 towards the aforementioned countries, there is good cause for the effective date of this rule to be the date of publication, as provided by 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Since 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

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

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, the Department has 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 Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Because the scope of this rule implements a governmental policy limiting defense

trade with a country, and does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. The Department also finds that any costs of this rulemaking are outweighed by the foreign policy benefits, as described in the preamble. This rule has not been designated a “significant regulatory action” by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department of State determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Executive Order 13771

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771, “Reducing Regulation and Controlling Regulatory

Costs.” See OMB Memorandum M–17–21, “Guidance Implementing Executive Order 13771” of April 5, 2017.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping 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.

Accordingly, 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 is amended by revising the table in paragraph (d)(2), and adding paragraph (w), and by removing the Note to 126.1.

The revision and addition read as follows:

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

* * * * *

(d) * * *

(2) * * *

Country	Country specific paragraph location
Afghanistan	See also paragraph (g) of this section.
Central African Republic	See also paragraph (u) of this section.
Cyprus	See also paragraph (r) of this section.
Democratic Republic of Congo	See also paragraph (i) of this section.
Eritrea	See also paragraph (h) of this section.
Haiti	See also paragraph (j) of this section.
Iraq	See also paragraph (f) of this section.
Lebanon	See also paragraph (t) of this section.
Libya	See also paragraph (k) of this section.
Somalia	See also paragraph (m) of this section.
South Sudan	See also paragraph (w) of this section.
Sudan	See also paragraph (v) of this section.
Zimbabwe	See also paragraph (s) of this section.

* * * * *

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

- (1) Defense articles and defense services for monitoring, verification, or peacekeeping support operations, including those authorized by the United Nations or operating with the consent of the relevant parties;
- (2) Defense articles and defense services intended solely for the support of, or use by, African Union Regional Task Force (AU-RTF) or United Nations entities operating in South Sudan, including but not limited to the United Nations Mission

in the Republic of South Sudan (UNMISS), the United Nations Mine Action Service (UNMAS), the United Nations Police (UNPOL), or the United Nations Interim Security Force for Abyei (UNISFA);

(3) Defense articles and defense services intended solely for the support of or use by non-governmental organizations in furtherance of conventional weapons destruction or humanitarian demining activities;

(4) Non-lethal defense articles intended solely for humanitarian or protective use and related technical training and assistance;

(5) Personal protective equipment including flak jackets and helmets, temporarily exported to South Sudan by United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel, for their personal use only; or

(6) Any defense articles and defense services provided in support of implementation of the Comprehensive Peace Agreement, the Agreement on the Resolution of the Conflict in the Republic of South Sudan, or any successor agreement.

Michael Miller,
Office Director,
Office of Regional Security and Arms
Transfers,
Bureau of Political-Military Affairs,
U.S. Department of State.