

**Rose E. Gottemoeller**,  
*Under Secretary, Arms Control and  
 International Security, Department of State.*  
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## 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 November 10, 2014.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663-2792; email [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 (l).** For non-lethal defense end-items, no distinction will be made between Vietnam's existing and new inventory.

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*Under Secretary, Arms Control and International Security, Department of State.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9700]

**RINs 1545-BK73; 1545-BL80**

#### **Allocation of Earnings and Profits in Tax-Free Transfers From One Corporation to Another; Acquiring Corporation for Purposes of Section 381**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 312 of the Internal Revenue Code (Code) that clarify the regulations under section 312 regarding the allocation of earnings and profits in tax-free transfers from one corporation to another. These regulations affect corporations involved in these transfers and their shareholders. This document also contains final regulations under section 381 of the Code that modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. These regulations affect corporations that acquire the assets of other corporations in corporate reorganizations.

**DATES:** *Effective Date:* These regulations are effective on November 10, 2014.

*Applicability Date:* These regulations apply to transactions occurring on or after November 10, 2014.

**FOR FURTHER INFORMATION CONTACT:** Stephanie D. Floyd at (202) 317-6848 or Isaac W. Zimbalist at (202) 317-6847 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This document contains amendments to 26 CFR part 1 under section 312 and section 381 of the Code. On April 16, 2012, the IRS and the Treasury

Department published a notice of proposed rulemaking (REG-141268-11) in the **Federal Register** (77 FR 22515) containing proposed regulations under section 312 (proposed section 312 regulations) to clarify § 1.312-11 regarding the allocation of earnings and profits in nonrecognition transfers of property from one corporation to another. The proposed section 312 regulations provided that, in a transfer described in section 381(a) (section 381 transaction), the acquiring corporation, as defined in § 1.381(a)-1(b)(2), would succeed to the earnings and profits of the distributor or transferor corporation. For example, in a reorganization under section 368(a)(1) by reason of section 368(a)(2)(C), if the transferee corporation that directly acquires a transferor corporation's assets transferred some, but not all, of the acquired assets to a controlled subsidiary, the transferee corporation (the acquiring corporation under § 1.381(a)-1(b)(2)) would succeed to the transferor corporation's earnings and profits. However, if the transferee corporation instead transferred all of the acquired assets to a controlled subsidiary, then the controlled subsidiary (the acquiring corporation under § 1.381(a)-1(b)(2)) would succeed to the transferor corporation's earnings and profits.

Comments responding to the proposed section 312 regulations were received, but no public hearing was requested or held. In response to the comments received on the proposed section 312 regulations, on May 7, 2014, the IRS and the Treasury Department published a notice of proposed rulemaking (REG-131239-13) in the **Federal Register** (79 FR 26190) containing proposed regulations under section 381 (proposed section 381 regulations) to modify the definition of an acquiring corporation for purposes of section 381 with regard to certain acquisitions of assets. As discussed in the preamble to the proposed section 381 regulations, commenters generally welcomed the apparent certainty provided by the proposed section 312 regulations regarding the location of the transferor corporation's earnings and profits. However, commenters suggested that this certainty was illusory because the existing definition of "acquiring corporation" under § 1.381(a)-1(b)(2) focused on whether the direct transferee corporation in a reorganization further transferred *all* of the assets it received in the section 381 transaction. Thus, commenters suggested that the existing regulations under section 381 should be revised to limit the degree of electivity

regarding the identity of the acquiring corporation, as well as the uncertainty regarding whether *all* of the assets transferred in the section 381 transaction were further transferred to a single controlled corporation.

The proposed section 381 regulations provided greater certainty regarding the identity of the acquiring corporation by providing that, in a transaction described in section 381(a)(2), the term *acquiring corporation* means the corporation that directly acquired the assets transferred by the transferor corporation, even if the direct transferee corporation ultimately retained none of the assets so transferred. As discussed in the preamble to the proposed section 381 regulations, the IRS and the Treasury Department believe that this rule is appropriate with respect to determining the location of the earnings and profits (as well as other tax attributes) of a transferor corporation because it generally maintains such earnings and profits at the corporation closest to the transferor corporation's former shareholders in a manner that minimizes electivity and administrative burden. No comments were received in response to the proposed section 381 regulations, and no public hearing was requested or held.

#### **Explanation of Provisions**

The proposed section 381 regulations are adopted without substantive change by this Treasury decision. Because the proposed section 312 regulations merely cross-reference the section 381 regulations, this Treasury decision also adopts the proposed section 312 regulations without substantive change.

However, these final regulations make a clarifying, non-substantive change to the proposed section 312 regulations. The proposed section 312 regulations provided that "[e]xcept as provided in § 1.312-10, in all other cases in which property is transferred from one corporation to another and no gain or loss is recognized (or is recognized only to the extent of the property received other than that permitted to be received without the recognition of gain), no allocation of the earnings and profits of the transferor is made to the transferee." These final regulations remove the language "and no gain or loss is recognized (or is recognized only to the extent of the property received other than that permitted to be received without the recognition of gain)." The IRS and the Treasury Department believe this language may inappropriately imply that allocation of earnings and profits may be permitted in cases in which gain not expressly described is recognized on the transfer