

U.S. Arms Sales to the Middle East: Trump Administration Uses Emergency Exception in the Arms Export Control Act

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Related Author

- [Jeremy M. Sharp](#)
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Jeremy M. Sharp, Coordinator, Specialist in Middle Eastern Affairs (jsharp@crs.loc.gov, 7-8687)
Christopher M. Blanchard, Coordinator of Research Planning (cblanchard@crs.loc.gov, 7-0428)
Clayton Thomas, Analyst in Middle Eastern Affairs (cbthomas@crs.loc.gov, 7-2719)

Overview

On May 24, 2019, the Trump Administration formally notified Congress of immediate foreign military sales and direct commercial sales of [training, equipment, and weapons](#) with a possible value of more than \$8 billion, including sales of precision guided munitions (PGMs) to Saudi Arabia and the United Arab Emirates (UAE), and the gift transfer of PGMs by the UAE to Jordan. Other notified sales include, among others: F-15 Engines and Support for Saudi Arabia and AH-64 equipment, Javelin Anti-Tank Missiles, and Patriot Guidance Enhanced Missiles for the UAE.

In making the notifications, Secretary of State Michael Pompeo invoked emergency authority codified in sections 36(b)(1), 36(c)(2), 36(d)(2), and 3(d)(2) of the [Arms Export Control Act](#) (AECA), as amended ([22 U.S.C. 2776](#)). The Secretary interpreted those provisions as granting the President authority to waive the specified statutory [congressional review periods for proposed sales under the AECA](#). If the President states in a formal notification to Congress that "an emergency exists" requiring the sale, export license, or technical assistance and manufacturing license of arms and related materiel, "in the national security interests of the United States," and waives the requirements for congressional review, then the President is free to proceed with the sale, export, or licensing. The President must provide Congress at the time of this notification a "detailed justification" for his/her determination.

These arms sales to Saudi Arabia, the UAE, and Jordan coincide with [heightened U.S.-Iranian tensions](#) and renewed [Houthi attacks against Saudi infrastructure](#). In the justification for the use of emergency authority under the AECA, Secretary of State Pompeo [wrote to Congress](#) that:

Iranian malign activity poses a fundamental threat to the stability of the Middle East and to American security at home and abroad.... The rapidly-evolving security situation in the region requires an accelerated delivery of certain capabilities to U.S. partners in the region.... Such transfers, whether provided via the Foreign Military Sales system, or through the licensing of Direct Commercial Sales, must occur as quickly as possible in order to deter further Iranian adventurism in the Gulf and throughout the Middle East.

The President's announcement also follows Congress's recent passage, and President Trump's [veto](#), of S.J.Res. 7, which would have directed the President to end U.S. military support for Saudi operations in Yemen. Since the start of the Saudi-led coalition's military intervention in Yemen over four years ago, [some Members of Congress](#) have sought to condition, delay, or disapprove the sale of PGMs to the kingdom. Since 2018, Senator Menendez [has objected to the formal notification](#) of planned direct commercial sales to Saudi Arabia and the United Arab Emirates, and, under established inter-branch arrangements, the Trump Administration had abstained from proceeding with the formal notification.

Past Presidential Usage of the AECA's Emergency Authority

Past Administrations have used AECA emergency authorities to immediately sell arms to foreign partners, generating debate in Congress over the cases in question and the broader availability and use of the authorities by the executive branch:

- In March 1979, President Jimmy Carter notified Congress that an emergency existed that required the United States to sell arms to North Yemen. [The notification](#) followed February 1979 attacks on North Yemen by forces of South Yemen using weapons supplied by the Soviets. In the wake of the notification, Congress adopted a House provision amending the AECA to require that the President provide a detailed justification in future uses of the authority (Section 19(c) of the International Security Assistance Act of 1979, [P.L. 96-92](#)).
- In May 1984, President Ronald Reagan notified Congress that an emergency existed that required the United States to sell Stinger air defense missile systems to Saudi Arabia. [The notification](#) was made amid escalation of the Iran-Iraq war that featured Iraqi attacks on Iranian oil facilities and Iranian attacks on Kuwaiti and Saudi ships. Saudi Arabia requested the missiles to provide for more rapid self-defense against Iranian attacks. Congress had debated possible missile sales to Saudi Arabia in March 1984, and some Members had expressed opposition, leading the Reagan Administration to withdraw its proposal for the sale of Stinger missiles later that month before invoking the AECA emergency authority in May.
- In August 1990, President George H.W. Bush notified Congress that an emergency existed that required the United States to sell 150 M60A3 tanks and 24 F-15C/D aircraft to Saudi Arabia. At the same time, President Bush exercised waivers of other statutory limits that were in place on the transfer of F-15 aircraft, Stinger missiles, and depleted uranium anti-tank ammunition to Saudi Arabia. [The notification](#) occurred in the immediate wake of the Iraqi invasion of Kuwait.

Outlook

The Trump Administration's use of AECA emergency authorities to sell or transfer arms to Saudi Arabia, the UAE, and Jordan raises several potential issues for Congress. [Many Members are concerned](#) that continued Iranian weapons smuggling to the Houthis in Yemen has given a non-state actor not only improved ballistic missile capabilities, but also the ability to use unmanned aerial vehicles to threaten [Saudi oil infrastructure](#). Congress could examine and debate whether [this long-established pattern of Houthi behavior](#) and [alleged Iranian involvement in attacks on shipping](#) constitute an emergency that warrants the immediate sale of each of the items in question. The national security emergency exception has been a feature of the laws governing foreign military sales since amendments made in 1974. At that time, Members debated how best to establish a role for Congress in reviewing proposed sales while accommodating instances where emergencies might require swift executive branch action. Lawmakers [could seek to](#) block or modify the notified sales using either a joint resolution of disapproval or [other bills](#) prohibiting or modifying some or all of the sales, or conditioning or prohibiting the delivery of equipment, but such legislation would be subject to presidential veto. More broadly, Members of Congress could reexamine and debate the terms and conditions of the national security waivers provided in 22 U.S.C. 2776.