



U.S. Review of an Arms Sale to Israel: Issues for Congress

May 14, 2024

Overview

In May 2024, [U.S. officials confirmed](#) reports that the Biden Administration is “reviewing some near-term security assistance” for Israel and has paused a shipment of 2,000-pound bombs and 500-pound bombs based on concern about their potential use in the city of Rafah, Gaza. The Administration’s action comes after inconclusive Israel-Hamas cease-fire negotiations and the subsequent launch of Israeli air and ground operations near Rafah, where an estimated 1.4 million Gazans have gathered, including 1.1 million people displaced by fighting elsewhere in the Gaza Strip. For weeks, U.S. officials reportedly had [warned](#) Israel not to proceed with major military operations in Rafah without adequately planning for civilian safety and welfare. [President Joe Biden said on May 8](#) that he had “made it clear to Bibi [Prime Minister Benjamin Netanyahu] and the war cabinet, they’re not going to get our support, if in fact they go on these population centers.” He also said, “We’re not walking away from Israel’s security; we’re walking away from Israel’s ability to wage war in those areas.”

Two days later, the Administration released its [report to Congress](#) under Section 2 of the National Security Memorandum-20 (NSM-20). The report concluded that “given Israel’s significant reliance on U.S.-made defense articles, it is reasonable to assess that defense articles covered under NSM-20 have been used by Israeli security forces since October 7 in instances inconsistent with its IHL [International Humanitarian Law] obligations or with established best practices for mitigating civilian harm.”

Congress appears [divided over the President’s weapons pause](#), with [some lawmakers agreeing](#) with the President’s decision and others decrying it for what they call its effect on the “[timely delivery of security assistance to Israel](#).” Opponents of the pause in the House have reportedly planned a floor vote on the [Israel Security Assistance Support Act \(ISASA – see below\)](#).

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Issues for Congress

Presidential Authority to Pause U.S. Weapons Sales

The President has a number of mechanisms to alter or end the sales of U.S.-origin defense articles. The [Arms Export Control Act \(AECA\)](#) and the [Foreign Assistance Act of 1961](#) establish the statutory foundations governing Foreign Military Sales (FMS) and Direct Commercial Sales (DCS) to foreign governments. The [AECA](#) prohibits the sale or delivery of U.S.-origin defense articles if the President finds that a recipient country has used such articles for unauthorized purposes. The [AECA](#) also stipulates that such countries would, absent a presidential waiver, be ineligible for future U.S. sales of defense articles until the President determines the violation has ceased and recipients assure violations will not recur. The law does not provide for such a waiver if Congress has adopted a joint resolution, which would be subject to presidential veto.

The executive branch also has wide-ranging authority to cancel an FMS transaction prior to the articles' delivery. The [standard Letter of Offer and Acceptance \(LOA\)](#) terms and conditions permit the U.S. government, under "unusual and compelling circumstances, when the national interest of the U.S. requires," to "cancel or suspend all or part" of such a letter "at any time prior to the delivery of defense articles."

The U.S. government similarly has extensive authority to cancel or modify export licenses for U.S.-origin defense articles. [Section 126.7 of the International Traffic in Arms Regulations \(ITAR\)](#) states that such licenses "may be revoked, suspended, or amended without prior notice whenever" the State Department "believes that" the recipient has violated "the terms of any U.S. Government export authorization." The Department may also take these actions if it deems them to be "in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable."

In 2021, the Biden Administration [paused](#) certain weapons sales and transfers to Saudi Arabia, reportedly including transfers of air-to-ground munitions, based on concerns about the effect of Saudi military operations in Yemen on civilians and U.S. national security interests.

U.S. Foreign Aid to Israel and Congressional Notification

President Biden's weapons pause has sparked some [congressional concern](#) over whether the Administration is obligating and notifying foreign assistance funding, such as [Foreign Military Financing for Israel](#). Congress appropriated \$3.5 billion in FMF for assistance to Israel and related expenses in the [Israel Security Supplemental Appropriations Act](#). Such funds are available for obligation until September 30, 2025, and are required to have a spend plan within 15 days of enactment, outlined in Section 310 of Division A. [Regular notification procedures apply](#), but the legislation includes a provision waiving the notification requirement for FMF funds if "the Secretary of State determines that to do so is in the national security interest of the United States." [Congress monitors agency delay in making funds available](#) for obligation or expenditure through the [Impoundment Control Act of 1974 \(ICA\)](#).

Possible Legislation

ISASA would prohibit FY2024 or earlier funds from being used to withhold defense items/services to Israel. It also would withhold funds from the Secretary of Defense, Secretary of State, and the National Security Council until U.S. officials can certify that items withheld from Israel had been delivered. The bill also would require a monthly report to Congress providing a list of the defense articles and services provided to Israel since October 7, 2023. On May 13, [National Security Advisor Jake Sullivan said](#), "We are continuing to send military assistance, and we will ensure that Israel receives the full amount provided

in the supplemental. We have paused a shipment of 2,000-pound bombs because we do not believe they should be dropped in densely populated cities. We are talking to the Israeli government about this.”

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