national Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

§ 2724. Fees for commercial services

(a) Authority to charge fee

(1) Subject to paragraph (2), the Secretary of State is authorized to charge a fee to cover the actual or estimated cost of providing any person, firm or organization (other than agencies of the United States Government) with commercial services at posts abroad on matters within the authority of the Department of State.

(2) The authority of this section may be exercised only in countries where the Department of Commerce does not perform commercial services for which it collects fees.

(b) Use of fees

Funds collected under the authority of subsection (a) of this section shall be deposited as an offsetting collection to any Department of State appropriation to recover the costs of providing commercial services.

(Aug. 1, 1956, ch. 841, title I, § 52, as added Pub. L. 103–236, title I, § 136, Apr. 30, 1994, 108 Stat. 396.)

CHAPTER 39—ARMS EXPORT CONTROL

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to sections 2272, 2291, 2291e, 2291f, 2304, 2311, 2318, 2321h, 2321i, 2321j, 2321k, 2349a, 2349aa–2, 2364, 2370a, 2373, 2378–1, 2394–1, 2403, 2413, 2414, 2423, 2778a, 3402, 5603, 5605, 6003, 6041 of this title; title 10 sections 130, 2344, 2350b, 2350c; title 12 section 635; title 15 section 4605; title 18 section 2516; title 26 section 901; title 29 sections 1662d, 1662d–1; title 49 section 44908; title 50 section 415.

SUBCHAPTER I—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

§ 2751. Need for international defense cooperation and military export controls; Presidential waiver; report to Congress; arms sales policy

As declared by the Congress in the Arms Control and Disarmament Act [22 U.S.C. 2551 et seq.], an ultimate goal of the United States continues to be a world which is free from the scourge of war and the dangers and burdens of armaments; in which the use of force has been subordinated to the rule of law; and in which international adjustments to a changing world are achieved peacefully. In furtherance of that goal, it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.

The Congress recognizes, however, that the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships in order to maintain and foster the environment of international peace and security essential to social, economic, and political progress. Because of the growing cost and complexity of defense equipment, it is increasingly difficult and uneconomic for any country, particularly a developing country, to fill all of its

legitimate defense requirements from its own design and production base. The need for international defense cooperation among the United States and those friendly countries to which it is allied by mutual defense treaties is especially important, since the effectiveness of their armed forces to act in concert to deter or defeat aggression is directly related to the operational compatibility of their defense equipment.

Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries which further the objective of applying agreed resources of each country to programs and projects of cooperative exchange of data, research, development, production, procurement, and logistics support to achieve specific national defense requirements and objectives of mutual concern. To this end, this chapter authorizes sales by the United States Government to friendly countries having sufficient wealth to maintain and equip their own military forces at adequate strength, or to assume progressively larger shares of the costs thereof, without undue burden to their economies, in accordance with the restraints and control measures specified herein and in furtherance of the security objectives of the United States and of the purposes and principles of the United Nations Charter.

It is the sense of the Congress that all such sales be approved only when they are consistent with the foreign policy interests of the United States, the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended [22 U.S.C. 2151 et seq.], the extent and character of the military requirement, and the economic and financial capability of the recipient country, with particular regard being given, where appropriate, to proper balance among such sales, grant military assistance, and economic assistance as well as to the impact of the sales on programs of social and economic development and on existing or incipient arms races.

It shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments. United States programs for or procedures governing the export, sale, and grant of defense articles and defense services to foreign countries and international organizations shall be administered in a manner which will carry out this policy.

It is the sense of the Congress that the President should seek to initiate multilateral discussions for the purpose of reaching agreements among the principal arms suppliers and arms purchasers and other countries with respect to the control of the international trade in armaments. It is further the sense of Congress that the President should work actively with all nations to check and control the international sale and distribution of conventional weapons of death and destruction and to encourage regional arms control arrangements. In furtherance of this policy, the President should undertake a concerted effort to convene an international conference of major arms-supplying and arms-purchasing nations which shall consider measures to limit conventional arms transfers in the interest of international peace and stability.

It is the sense of the Congress that the aggregate value of defense articles and defense services—

(1) which are sold under section 2761 or section 2762 of this title; or

(2) which are licensed or approved for export under section 2778 of this title to, for the use, or for benefit of the armed forces, police, intelligence, or other internal security forces of a foreign country or international organization under a commercial sales contract;

in any fiscal year should not exceed current levels.

It is the sense of the Congress that the President maintain adherence to a policy of restraint in conventional arms transfers and that, in implementing this policy worldwide, a balanced approach should be taken and full regard given to the security interests of the United States in all regions of the world and that particular attention should be paid to controlling the flow of conventional arms to the nations of the developing world. To this end, the President is encouraged to continue discussions with other arms suppliers in order to restrain the flow of conventional arms to less developed countries.

(Pub. L. 90–629, ch. 1, § 1, Oct. 22, 1968, 82 Stat. 1321; Pub. L. 91–672, § 4, Jan. 12, 1971, 84 Stat. 2053; Pub. L. 93–189, § 25(1), Dec. 17, 1973, 87 Stat. 729; Pub. L. 94–329, title II, § 202, formerly § 202(a), June 30, 1976, 90 Stat. 734, renumbered and amended Pub. L. 95–384, §§ 15(a), 29(c)(1)(A), Sept. 26, 1978, 92 Stat. 739, 747; Pub. L. 97–113, title VII, § 734(a)(10), Dec. 29, 1981, 95 Stat. 1560.)

REFERENCES IN TEXT

The Arms Control and Disarmament Act, referred to in text, is Pub. L. 87–297, Sept. 26, 1961, 75 Stat. 631, as amended, which is classified generally to chapter 35 (§ 2551 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2551 of this title, and Tables.

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1321, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Foreign Assistance Act of 1961, as amended, referred to in text, is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

REFERENCES TO FOREIGN MILITARY SALES ACT DEEMED REFERENCE TO ARMS EXPORT CONTROL ACT

Section 201(b) of Pub. L. 94–329 provided that: ''Any reference to the Foreign Military Sales Act [see Short Title note above] shall be deemed to be a reference to the Arms Export Control Act.''

REFERENCES TO PRESENT INSTEAD OF PAST PROVISIONS; SPECIFIC APPLICATION OF OTHER PROVISIONS TO THIS CHAPTER

Section 45(c) of Pub. L. 90–629 provided that: ''References in law to the provisions of law repealed by subsection (a) of this section [repealing sections 2341 to 2343, 2344(b)(3), 2345, 2394(g), and 2399a of this title] shall hereafter [on and after Oct. 22, 1968] be deemed to be references to this Act [this chapter] or appropriate pro-

visions of this Act. Except for the laws specified in section 44 [section 2793 of this title], no other provision of law shall be deemed to apply to this Act unless it refers specifically to this Act or refers generally to sales of defense articles and defense services under any Act.''

AMENDMENTS

1981—Pub. L. 97–113 struck out paragraph which provided that it was the sense of Congress that sales and guaranties under sections 2761, 2762, 2763, and 2764 of this title not be approved where they would have had the effect of arming military dictators who were denying the growth of fundamental rights or social progress to their own people but allowing the President to waive this limitation when he determined it would be important to the security of the United States, and promptly so reported to the Speaker of the House of Representatives and the Committee on Foreign Relations in the Senate.

1978—Pub. L. 95–384, § 15(a), inserted paragraph relating to adherence to a policy of restraint in conventional arms transfer.

1976—Pub. L. 94–329 substituted in last paragraph provision relating to a new statement of policy whereby the United States shall exert leadership in the reduction of international trade in arms, and in that regard, the President to initiate discussions and actively work with other nations with a view towards control of international trade in arms, for provisions relating to a reduction in the role of the United States in furnishing of defense articles and defense services to foreign countries and international organizations by decreasing sales, credit sales and guarantees of such articles and services.

1973—Pub. L. 93–189 inserted last paragraph relating to a reduction by the United States in the furnishing of defense articles and defense services to foreign countries.

1971—Pub. L. 91–672 substituted ''denying the growth of fundamental rights or social progress'' for ''denying social progress'' in last par.

EFFECTIVE DATE

Section 41 of Pub. L. 90–629 provided that: ''This Act [enacting this chapter, amending sections 2344, 2382, 2392, 2394, and 2403 of this title, repealing sections 2341 to 2343, 2345, and 2399a of this title, and enacting provisions set out as notes under this section and section 2341 of this title] shall take effect on July 1, 1968.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–228, § 1, Dec. 12, 1991, 105 Stat. 1691, provided that: ''This Act [enacting sections 2595b–1 and 2799 to 2799d of this title, amending sections 2581, 2589, 2595, and 2595c of this title, and enacting provisions set out as notes under section 2551 of this title] may be cited as the 'Conventional Forces in Europe Treaty Implementation Act of 1991'.''

SHORT TITLE

Pub. L. 90–629, as amended by section 201(a) of Pub. L. 94–329, provided: ''That this Act [enacting this chapter, amending sections 2382, 2392, 2394, and 2403 of this title, repealing sections 2341 to 2343, 2344, 2345, 2394, and 2399 of this title, and enacting provisions set out as notes under this section and section 2341 of this title] may be cited as the 'Arms Export Control Act'.''

ELIGIBILITY OF PANAMA UNDER ARMS EXPORT CONTROL ACT

Pub. L. 104–164, title I, § 154, July 21, 1996, 110 Stat. 1440, provided that: ''The Government of the Republic of Panama shall be eligible to purchase defense articles and defense services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), except as otherwise specifically provided by law.''

REPORTS ON COUNTERPROLIFERATION ACTIVITIES AND PROGRAMS

Pub. L. 103–337, div. A, title XV, § 1503, Oct. 5, 1994, 108 Stat. 2916; Pub. L. 104–201, div. A, title XIII, § 1309(d), Sept. 23, 1996, 110 Stat. 2710, provided that:

''(a) ANNUAL REPORT REQUIRED.—Not later than May 1 of each year, the Secretary of Defense shall submit to Congress a report of the findings of the Counterproliferation Program Review Committee established by subsection (a) of the Review Committee charter.

''(b) CONTENT OF REPORT.—Each report under subsection (a) shall include the following:

''(1) A complete list, by specific program element, of the existing, planned, or newly proposed capabilities and technologies reviewed by the Review Committee pursuant to subsection (c) of the Review Committee charter.

''(2) A complete description of the requirements and priorities established by the Review Committee.

''(3) A comprehensive discussion of the near-term, mid-term, and long-term programmatic options formulated by the Review Committee for meeting requirements prescribed by the Review Committee and for eliminating deficiencies identified by the Review Committee, including the annual funding requirements and completion dates established for each such option.

''(4) An explanation of the recommendations made pursuant to subsection (c) of the Review Committee charter, together with a full discussion of the actions taken to implement such recommendations or otherwise taken on the recommendations.

''(5) A discussion and assessment of the status of each Review Committee recommendation during the fiscal year preceding the fiscal year in which the report is submitted, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, in the fiscal year of the report.

''(6) Each specific Department of Energy program that the Secretary of Energy plans to develop to initial operating capability and each such program that the Secretary does not plan to develop to initial operating capability.

''(7) For each technology program scheduled to reach initial operational capability, a recommendation from the Chairman of the Joint Chiefs of Staff that represents the views of the commanders of the unified and specified commands regarding the utility and requirement of the program.

''(c) FORMS OF REPORT.—Each such report shall be submitted in both unclassified and classified forms, including an annex to the classified report for special compartmented information programs, special access programs, and special activities programs.

''(d) REVIEW COMMITTEE CHARTER DEFINED.—For purposes of this section, the term 'Review Committee charter' means section 1605 of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160] (22 U.S.C. 2751 note).

''(e) TERMINATION OF REQUIREMENT.—The final report required under subsection (a) is the report for the year following the year in which the Counterproliferation Program Review Committee established under the Review Committee Charter ceases to exist.''

ARAB LEAGUE BOYCOTT OF ISRAEL

Pub. L. 103–236, title V, § 564, Apr. 30, 1994, 108 Stat. 484, as amended by Pub. L. 103–415, § 1(*l*), Oct. 25, 1994, 108 Stat. 4301, provided that:

''(a) PROHIBITION.—No defense article or defense service may be sold or leased by the United States Government to any country or international organization that, as a matter of policy or practice, is known to have sent letters to United States firms requesting compliance with, or soliciting information regarding compliance with, the Arab League secondary or tertiary boycott of Israel, unless the President deter-

mines, and so certifies to the appropriate congressional committees, that that country or organization does not currently maintain a policy or practice of making such requests or solicitations.

''(b) WAIVER.—

''(1) 1-YEAR WAIVER.—On or after the effective date of this section, the President may waive, for a period of 1 year, the application of subsection (a) with respect to any country or organization if the President determines, and reports to the appropriate congressional committees, that—

''(A) such waiver is in the national interest of the United States, and such waiver will promote the objectives of this section to eliminate the Arab boycott; or

''(B) such waiver is in the national security interest of the United States.

''(2) EXTENSION OF WAIVER.—If the President determines that the further extension of a waiver will promote the objectives of this section, the President, upon notification of the appropriate congressional committees, may grant further extensions of such waiver for successive 12-month periods.

''(3) TERMINATION OF WAIVER.—The President may, at any time, terminate any waiver granted under this subsection.

''(c) DEFINITIONS.—As used in this section—

''(1) the term 'appropriate congressional committees' means the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives; and

''(2) the terms 'defense article' and 'defense service' have the meanings given to such terms by paragraphs (3) and (4), respectively, of section 47 of the Arms Export Control Act [22 U.S.C. 2794(3), (4)].

''(d) EFFECTIVE DATE.—This section shall take effect 1 year after the date of enactment of this Act [Apr. 30, 1994].''

[Memorandum of President of the United States, Apr. 24, 1997, 62 F.R. 24797, delegated to Secretary of State functions of President under section 564 of Public Law 103–236, set out above.]

[Certifications and determinations relating to suspension of application by President under section 564 of Pub. L. 103–236, set out above, were contained in the following:

[Determination of President of the United States, No. 96–23, Apr. 30, 1996, 61 F.R. 26029.

[Determination of President of the United States, No. 95–20, May 1, 1995, 60 F.R. 22245.]

COUNTERPROLIFERATION POLICY AND PROGRAMS OF UNITED STATES

Pub. L. 103–160, div. A, title XVI, §§1603, 1605, 1607, Nov. 30, 1993, 107 Stat. 1843, 1845, 1847, as amended by Pub. L. 103–337, div. A, title XV, §§1502, 1505(a), (b), Oct. 5, 1994, 108 Stat. 2914, 2919; Pub. L. 104–106, div. A, title XV, §1504(b), Feb. 10, 1996, 110 Stat. 513; Pub. L. 104–201, div. A, title XIII, §1309(a)–(c), Sept. 23, 1996, 110 Stat. 2710, provided that:

''SEC. 1603. STUDIES RELATING TO UNITED STATES COUNTERPROLIFERATION POLICY.

''(a) AUTHORIZATION TO CONDUCT STUDIES.—The Secretary of Defense may conduct studies and analysis programs in support of the counterproliferation policy of the United States.

''(b) COUNTERPROLIFERATION STUDIES.—Studies and analysis programs under this section may include programs intended to explore defense policy issues that might be involved in efforts to prevent and counter the proliferation of weapons of mass destruction and their delivery systems. Such efforts include—

''(1) enhancing United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction;

''(2) cooperating in international programs to enhance military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction; and

''(3) otherwise contributing to Department of Defense capabilities to deter, identify, monitor, and respond to such terrorism, theft, and proliferation involving weapons of mass destruction.

''(c) DESIGNATION OF COORDINATOR.—The Under Secretary of Defense for Policy, subject to the supervision and control of the Secretary of Defense, shall coordinate the policy studies and analysis of the Department of Defense on countering proliferation of weapons of mass destruction and their delivery systems.

''(d) REPORT.—Not later than April 30 of each year, the Secretary of Defense shall submit to the appropriate congressional committees a report on the activities carried out under subsection (a). Each report shall set forth for the twelve-month period ending on the last day of the month preceding the month in which the report is due the following:

''(1) A description of the studies and analysis carried out.

''(2) The amounts spent for such studies and analysis.

''(3) The organizations that conducted the studies and analysis.

''(4) An explanation of the extent to which such studies and analysis contribute to the counterproliferation policy of the United States and United States military capabilities to deter and respond to terrorism, theft, and proliferation involving weapons of mass destruction.

''(5) A description of the measures being taken to ensure that such studies and analysis within the Department of Defense are managed effectively and coordinated comprehensively.

''SEC. 1605. JOINT COMMITTEE FOR REVIEW OF COUNTERPROLIFERATION PROGRAMS OF THE UNITED STATES.

''(a) ESTABLISHMENT.—(1) There is hereby established a Counterproliferation Program Review Committee composed of the following members:

''(A) The Secretary of Defense.

''(B) The Secretary of Energy.

''(C) The Director of Central Intelligence.

''(D) The Chairman of the Joint Chiefs of Staff.

''(2) The Secretary of Defense shall chair the committee. The Secretary of Energy shall serve as the Vice Chairman of the committee.

''(3) A member of the committee may designate a representative to perform routinely the duties of the member. A representative shall be in a position of Deputy Assistant Secretary or a position equivalent to or above the level of Deputy Assistant Secretary. A representative of the Chairman of the Joint Chiefs of Staff shall be a person in a grade equivalent to that of Deputy Assistant Secretary of Defense.

''(4) The Secretary of Defense may delegate to the Under Secretary of Defense for Acquisition and Technology the performance of the duties of the Chairman of the committee. The Secretary of Energy may delegate to the Under Secretary of Energy responsible for national security programs of the Department of Energy the performance of the duties of the Vice Chairman of the committee.

''(5) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs shall serve as executive secretary to the committee.

''(b) PURPOSES OF THE COMMITTEE.—The purposes of the committee are as follows:

''(1) To optimize funding for, and ensure the development and deployment of—

''(A) highly effective technologies and capabilities for the detection, monitoring, collection, processing, analysis, and dissemination of information in support of United States counterproliferation policy and efforts, including efforts to stem the proliferation of weapons of mass destruction and to negate paramilitary and terrorist threats involving weapons of mass destruction; and

''(B) disabling technologies in support of such policy.

''(2) To identify and eliminate undesirable redundancies or uncoordinated efforts in the development and deployment of such technologies and capabilities.

''(3) To establish priorities for programs and funding.

''(4) To encourage and facilitate interagency and interdepartmental funding of programs in order to ensure necessary levels of funding to develop, operate, and field highly-capable systems.

''(5) To ensure that Department of Energy programs are integrated with the operational needs of other departments and agencies of the Government.

''(6) To ensure that Department of Energy national security programs include technology demonstrations and prototype development of equipment.

''(c) DUTIES.—The committee shall—

''(1) identify and review existing and proposed capabilities and technologies for support of United States nonproliferation policy and counterproliferation policy with regard to—

''(A) intelligence;

''(B) battlefield surveillance;

''(C) passive defenses;

''(D) active defenses; and

''(E) counterforce capabilities;

''(2) prescribe requirements and priorities for the development and deployment of highly effective capabilities and technologies;

''(3) identify deficiencies in existing capabilities and technologies;

''(4) formulate near-term, mid-term, and long-term programmatic options for meeting requirements established by the committee and eliminating deficiencies identified by the committee; and

''(5) assess each fiscal year the effectiveness of the committee actions during the preceding fiscal year, including, particularly, the status of recommendations made during such preceding fiscal year that were reflected in the budget submitted to Congress pursuant to section 1105(a) of title 31, United States Code, for the fiscal year following the fiscal year in which the assessment is made.

''(d) ACCESS TO INFORMATION.—The committee shall have access to information on all programs, projects, and activities of the Department of Defense, the Department of State, the Department of Energy, the intelligence community, and the Arms Control and Disarmament Agency that are pertinent to the purposes and duties of the committee.

''(e) RECOMMENDATIONS.—The committee shall submit to the President and the heads of all appropriate departments and agencies of the Government such programmatic recommendations regarding existing, planned, or new programs as the committee considers appropriate to encourage funding for capabilities and technologies at the level necessary to support United States counterproliferation policy.

''(f) TERMINATION OF COMMITTEE.—The committee shall cease to exist at the end of September 30, 2000.

''SEC. 1607. DEFINITIONS.

''For purposes of this subtitle [subtitle A, §§ 1601–1607, of title XVI of div. A of Pub. L. 103–160, amending section 5859a of this title and enacting this note]:

''(1) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Appropriations, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

''(B) the Committee on Armed Services [now Committee on National Security], the Committee on Appropriations, the Committee on Foreign Affairs [now Committee on International Relations], and the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) The term 'intelligence community' has the meaning given such term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).''

RESTRICTION ON ARMS SALES TO SAUDI ARABIA AND KUWAIT

Pub. L. 102–229, title I, § 104, Dec. 12, 1991, 105 Stat. 1707, provided that:

''(a) No funds appropriated or otherwise made available by this or any other Act may be used in any fiscal year to conduct, support, or administer any sale of defense articles or defense services to Saudi Arabia or Kuwait until that country has paid in full, either in cash or in mutually agreed in-kind contributions, the following commitments made to the United States to support Operation Desert Shield/Desert Storm:

''(1) In the case of Saudi Arabia, $16,839,000,000.

''(2) In the case of Kuwait, $16,006,000,000.

''(b) For purposes of this section, the term 'any sale' means any sale with respect to which the President is required to submit a numbered certification to the Congress pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] on or after the effective date of this section.

''(c) This section shall take effect 120 days after the date of enactment of this joint resolution [Dec. 12, 1991].

''(d) Any military equipment of the United States, including battle tanks, armored combat vehicles, and artillery, included within the Conventional Forces in Europe Treaty definition of 'conventional armaments and equipment limited by the Treaty', which may be transferred to any other NATO country shall be subject to the notification procedures stated in section 523 of Public Law 101–513 [104 Stat. 2007] and in section 634A of the Foreign Assistance Act of 1961 [22 U.S.C. 2394–1].''

ANNUAL REPORT ON PROLIFERATION OF MISSILES AND ESSENTIAL COMPONENTS OF NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS

Pub. L. 102–190, div. A, title X, § 1097, Dec. 5, 1991, 105 Stat. 1489, as amended by Pub. L. 104–106, div. A, title XV, §§ 1502(c)(3), 1504(d), Feb. 10, 1996, 110 Stat. 507, 514, provided that:

''(a) REPORT REQUIRED.—(1) The President shall submit to the Committee on National Security and the Committee on International Relations of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate an annual report on the transfer by any country of weapons, technology, or materials that can be used to deliver, manufacture, or weaponize nuclear, biological, or chemical weapons (hereinafter in this section referred to as 'NBC weapons') to any country other than a country referred to in subsection (d) that is seeking to acquire such weapons, technology, or materials, or other system that the Secretary of Defense has reason to believe could be used to deliver NBC weapons.

''(2) The first such report shall be submitted not later than 90 days after the date of the enactment of this Act [Dec. 5, 1991].

''(b) MATTERS TO BE COVERED.—Each such report shall cover—

''(1) the transfer of all aircraft, cruise missiles, artillery weapons, unguided rockets and multiple rocket systems, and related bombs, shells, warheads and other weaponization technology and materials that the Secretary has reason to believe may be intended for the delivery of NBC weapons;

''(2) international transfers of MTCR equipment or technology to any country that is seeking to acquire such equipment or any other system that the Secretary has reason to believe may be used to deliver NBC weapons; and

''(3) the transfer of technology, test equipment, radioactive materials, feedstocks and cultures, and all other specialized materials that the Secretary has reason to believe could be used to manufacture NBC weapons.

''(c) CONTENT OF REPORT.—Each such report shall include the following:

''(1) The status of missile, aircraft, and other weapons delivery and weaponization programs in any such

country, including efforts by such country to acquire MTCR equipment, NBC-capable aircraft, or any other weapon or major weapon component which is dedicated to the delivery of NBC weapons, whose primary use is the delivery of NBC weapons, or that the Secretary has reason to believe could be used to deliver NBC weapons.

''(2) The status of NBC weapons development, manufacture, and deployment programs in any such country, including efforts to acquire essential test equipment, manufacturing equipment and technology, weaponization equipment and technology, and radioactive material, feedstocks or components of feedstocks, and biological cultures and toxins.

''(3) A description of assistance provided by any person or government, after the date of the enactment of this Act [Dec. 5, 1991], to any such country in the development of—

''(A) missile systems, as defined in the MTCR or that the Secretary has reason to believe may be used to deliver NBC weapons;

''(B) aircraft and other delivery systems and weapons that the Secretary has reason to believe could be used to deliver NBC weapons; and

''(C) NBC weapons.

''(4) A listing of those persons and countries which continue to provide such equipment or technology described in paragraph (3) to any country as of the date of submission of the report.

''(5) A description of the diplomatic measures that the United States, and that other adherents to the MTCR and other agreements affecting the acquisition and delivery of NBC weapons, have made with respect to activities and private persons and governments suspected of violating the MTCR and such other agreements.

''(6) An analysis of the effectiveness of the regulatory and enforcement regimes of the United States and other countries that adhere to the MTCR and other agreements affecting the acquisition and delivery of NBC weapons in controlling the export of MTCR and other NBC weapons and delivery system equipment or technology.

''(7) A summary of advisory opinions issued under section 11B(b)(4) of the Export Administration Act of 1979 (50 U.S.C. App. 2401b(b)(4)) [50 App. U.S.C. 2410b(b)(4)] and under section 73(d) of the Arms Export Control Act (22 U.S.C. 2797b(d)).

''(8) An explanation of United States policy regarding the transfer of MTCR equipment or technology to foreign missile programs, including programs involving launches of space vehicles.

''(d) EXCLUSIONS.—The countries excluded under subsection (a) are Australia, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Israel, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

''(e) CLASSIFICATION OF REPORT.—The President shall make every effort to submit all of the information required by this section in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit concurrently a detailed summary, in unclassified form, of that classified information.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The terms 'missile', 'MTCR', and 'MTCR equipment or technology' have the meanings given those terms in section 74 of the Arms Export Control Act (22 U.S.C. 2797c).

''(2) The term 'weaponize' or 'weaponization' means to incorporate into, or the incorporation into, usable ordnance or other militarily useful means of delivery.

''(g) REPEAL OF SUPERSEDED LAW.—Section 1704 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1749; 22 U.S.C. 2797 [22 U.S.C. 2797 note]) is repealed.''

[Ex. Ord. No. 12851, § 2(c), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title, delegated to Secretary of State authority and duties of the President to make certain reports to Congress as provided in section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102–190, set out above.]

CONVENTIONAL ARMS TRANSFERS

Pub. L. 99–83, title I, § 129, Aug. 8, 1985, 99 Stat. 206, directed President, at the earliest possible date, in consultation with United States allies, to initiate discussions with the Soviet Union and France aimed at beginning multilateral negotiations to limit and control the transfer of conventional arms to less developed countries, and, within one year after Aug. 8, 1985, submit to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate a report which specifies steps being taken to fulfill such requirements and which examines and analyzes, among specified matters, United States policies concerning the export of conventional arms, especially sophisticated weapons, and possible approaches to developing multilateral limitations on conventional arms sales.

TERMINATION OF NONRECURRING ACTIVITIES UNDER FOREIGN ASSISTANCE ACT OF 1961 AND THIS CHAPTER AND REMOVAL FROM LAW

Section 734(c) of Pub. L. 97–113 provided that: ''Except as otherwise explicitly provided by their terms, amendments to the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] and the Arms Export Control Act [this chapter] which are applicable only to a single fiscal or calendar year or which require reports or other actions on a nonrecurring basis shall be deemed to have expired and shall be removed from law upon the expiration of the applicable time periods for the fulfillment of the required actions.''

REPORT TO CONGRESS BY PRESIDENT ON MULTILATERAL DISCUSSIONS CONCERNING ARMS TRANSFER POLICY

Section 15(b) of Pub. L. 95–384 directed President, not later than Dec. 31, 1979, to transmit to Congress a detailed report assessing results and commenting on implications of multilateral discussion referred to in paragraph added to this section by section 15(a) of Pub. L. 95–384, relating to adherence to a policy of restraint in conventional arms transfer, prior to repeal by Pub. L. 97–113, title VII, § 734(a)(12), Dec. 29, 1981, 95 Stat. 1560.

REPORT BY PRESIDENT ON REVIEW OF ARMS SALES CONTROLS ON NON-LETHAL ITEMS

Section 25 of Pub. L. 95–384 directed President, within 120 days after Sept. 26, 1978, to report in writing to Speaker of House of Representatives and chairman of Committee on Foreign Relations of Senate the results of the review conducted pursuant to Pub. L. 95–92, § 27, Aug. 4, 1977, 91 Stat. 626, set out below, prior to repeal by Pub. L. 97–113, title VII, § 734(a)(12), Dec. 29, 1981, 95 Stat. 1560.

REPORT BY PRESIDENT ON IMPACT OF FOREIGN ARMS SALES AND TRANSFERS TO FOREIGN GOVERNMENTS ON DEFENSE READINESS AND NATIONAL SECURITY OF UNITED STATES

Pub. L. 95–92, § 23, Aug. 4, 1977, 91 Stat. 624, set forth provisions respecting Presidential report on impact of United States foreign arms sales and transfers on defense readiness and national security, prior to repeal by Pub. L. 95–384, § 29(c)(2)(B), Sept. 26, 1978, 92 Stat. 747.

STUDY BY PRESIDENT OF NATIONAL SECURITY AND MILITARY IMPLICATIONS OF INTERNATIONAL TRANSFERS OF TECHNOLOGY; SCOPE OF STUDY; UTILIZATION OF EXECUTIVE DEPARTMENTS AND AGENCIES

Pub. L. 95–92, § 24, Aug. 4, 1977, 91 Stat. 624, as amended by Pub. L. 97–113, title VII, § 734(a)(13), Dec. 29, 1981, 95 Stat. 1560, directed President to conduct a comprehensive study of policies and practices of United States

Government with respect to national security and military implications of international transfers of technology in order to determine whether such policies and practices should be changed, with President to utilize resources and expertise of Arms Control and Disarmament Agency, Department of State, Department of Defense, Department of Commerce, National Science Foundation, Office of Science and Technology Policy, and such other entities within the Executive branch as he deemed necessary.

STATEMENT OF POLICY REGARDING UNITED STATES ARMS SALES TO ISRAEL

Pub. L. 95–92, § 26, Aug. 4, 1977, 91 Stat. 625, provided that: ''In accordance with the historic special relationship between the United States and Israel and previous agreements and continuing understandings, the Congress joins with the President in reaffirming that a policy of restraint in United States arms transfers, including arms sales ceilings, shall not impair Israel's deterrent strength or undermine the military balance in the Middle East.''

REVIEW BY PRESIDENT OF CATEGORIES AND ARMS SALES CONTROLS ON LETHAL AND NON-LETHAL ITEMS

Pub. L. 95–92, § 27, Aug. 4, 1977, 91 Stat. 626, directed President to undertake a review of all regulations relating to arms control for the purpose of defining and categorizing lethal and non-lethal products and establishing the appropriate level of control for each category.

STUDY OF UNITED STATES ARMS SALES POLICIES AND PRACTICES BY PRESIDENT; REPORT TO CONGRESS

Section 202(b) of Pub. L. 94–329 set forth provisions respecting study and report to Congress of United States arms sales policies and practices, prior to repeal by Pub. L. 95–384, § 29(c)(1)(A), Sept. 26, 1978, 92 Stat. 747.

PRESIDENTIAL REPORT REGARDING SALES OF EXCESS DEFENSE ARTICLES TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Section 217 of Pub. L. 94–329 set forth provisions respecting report by the President of all sales under this chapter of excess defense articles to foreign governments and international organizations, prior to repeal by Pub. L. 95–384, § 29(c)(1)(B), Sept. 26, 1978, 92 Stat. 747.

STUDY BY SECRETARIES OF STATE AND DEFENSE ON CONSEQUENCES OF ENACTMENT OF ARMS EXPORT CONTROL PROVISIONS

Section 218 of Pub. L. 94–329 set forth provisions respecting study by the Secretaries of State and Defense on consequences of enactment of arms export control provisions by title II of Pub. L. 94–329, prior to repeal by Pub. L. 95–384, § 29(c)(1)(C), Sept. 26, 1978, 92 Stat. 747.

TOTAL NUMBER OF CREDITS TO BE EXTENDED BETWEEN JULY 1, 1976, AND SEPTEMBER 30, 1976

Section 506(b) of Pub. L. 94–329 provided that the total number of credits extended pursuant to this chapter, between July 1, 1976, and Sept. 30, 1976, not exceed an amount equal to one-fourth of the total amount of credits extended and guaranteed for fiscal year 1976.

ADDITIONAL MILITARY AND CIVILIAN PERSONNEL FOR DEPARTMENT OF DEFENSE

Pub. L. 94–329, title VI, § 605(a), June 30, 1976, 90 Stat. 768, provided that: ''Nothing in this Act [see Short Title of 1976 Amendment note set out under section 2151 of the title] is intended to authorize any additional military or civilian personnel for the Department of Defense for the purposes of this Act, the Foreign Assistance Act of 1961 [section 2151 et seq. of this title], or the Arms Export Control Act [this chapter]. Personnel levels authorized in statutes authorizing appropriations for military and civilian personnel of the Department of Defense shall be controlling over all military and civilian personnel of the Department of Defense assigned to carry out functions under the Arms Export Control Act and the Foreign Assistance Act of 1961.''

SALES TO THE MIDDLE EAST; REQUESTS FOR ADDITIONAL APPROPRIATIONS

Section 5 of Pub. L. 91–672 provided that: ''It is the sense of Congress that (1) the President should continue to press forward urgently with his efforts to negotiate with the Soviet Union and other powers a limitation on arms shipments to the Middle East, (2) the President should be supported in his position that arms will be made available and credits provided to Israel and other friendly states, to the extent that the President determines such assistance to be needed in order to meet threats to the security and independence of such states, and (3) if the authorization provided in the Foreign Military Sales Act, as amended [this chapter], should prove to be insufficient to effectuate this stated policy, the President should promptly submit to the Congress requests for an appropriate supplementary authorization and appropriation.''

REVIEW OF MILITARY AID PROGRAMS AND EFFORTS FOR REGULATION OF CONVENTIONAL ARMS TRADE

Section 6 of Pub. L. 91–672 provided that: ''It is the sense of the Congress that—

''(1) the President should immediately institute a thorough and comprehensive review of the military aid programs of the United States, particularly with respect to the military assistance and sales operations of the Department of Defense, and

''(2) the President should take such actions as may be appropriate—

''(A) to initiate multilateral discussions among the United States, the Union of Soviet Socialist Republics, Great Britain, France, West Germany, Italy and other countries on the control of the worldwide trade in armaments,

''(B) to commence a general debate in the United Nations with respect to the control of the conventional arms trade, and

''(C) to use the power and prestige of his office to signify the intention of the United States to work actively with all nations to check and control the international sales and distribution of conventional weapons of death and destruction.''

EXECUTIVE ORDER NO. 11501

Ex. Ord. No. 11501, Dec. 22, 1969, 34 F.R. 20169, as amended by Ex. Ord. No. 11685, Sept. 25, 1972, 37 F.R. 20155, which related to the administration of this chapter, was revoked by Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, set out below.

EX. ORD. NO. 11958. ADMINISTRATION OF CHAPTER

Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended by Ex. Ord. No. 12118, Feb. 6, 1979, 44 F.R. 7939; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12210, Apr. 16, 1980, 45 F.R. 26313; Ex. Ord. No. 12321, Sept. 14, 1981, 46 F.R. 46109; Ex. Ord. No. 12365, May 24, 1982, 47 F.R. 22933; Ex. Ord. No. 12423, May 26, 1983, 48 F.R. 24025; Ex. Ord. No. 12560, May 24, 1986, 51 F.R. 19159; Ex. Ord. No. 12680, July 5, 1989, 54 F.R. 28995; Ex. Ord. No. 12738, § 7, Dec. 14, 1990, 55 F.R. 52035; Ex. Ord. No. 13030, § 2, Dec. 12, 1996, 61 F.R. 66187, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. *Delegation of Functions*. The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 et seq.), hereinafter referred to as the Act, and related legislation, are delegated as follows:

(a) Those under Section 3 of the Act [22 U.S.C. 2753], with the exception of subsections (a)(1), (b), (c)(3),

(c)(4), and (f) to the Secretary of State: *Provided*, That the Secretary of State, in the implementation of the functions delegated to him under Sections 3(a) and (d) of the Act, is authorized to find, in the case of a proposed transfer of a defense article or related training or other defense service by a foreign country or international organization not otherwise eligible under Section 3(a)(1) of the Act, whether the proposed transfer will strengthen the security of the United States and promote world peace.

(b) Those under Section 5 [22 U.S.C. 2755] to the Secretary of State.

(c) Those under Section 21 of the Act [22 U.S.C. 2761], with the exception of the last sentence of subsection (d) and all of subsection (i) [22 U.S.C. 2761(d), (i)], to the Secretary of Defense.

(d) Those under Sections 22(a), 29, 30 and 30A of the Act [22 U.S.C. 2762(a), 2769, 2770, 2770a] to the Secretary of Defense.

(e) Those under Section 23 of the Act [22 U.S.C. 2763] and section 571 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167) [22 U.S.C. 2763 note], to the Secretary of Defense, to be exercised in consultation with the Secretary of State and the Secretary of the Treasury, except that the President shall determine any rate of interest to be charged which is less than the market rate of interest.

(f) Those under Sections 24, 27, and 28 of the Act [22 U.S.C. 2764, 2767, former 2768] to the Secretary of Defense. The Secretary of Defense, in implementing the functions delegated to him under Sections 24 and 27 [22 U.S.C. 2764, 2767], shall consult with the Secretary of State and the Secretary of the Treasury.

(g) Those under Section 25 of the Act [22 U.S.C. 2765] to the Secretary of State. The Secretary of Defense and the Director of the Arms Control and Disarmament Agency, within their respective areas of responsibility, shall assist the Secretary of State in the preparation of materials for presentation to the Congress under that Section.

(h) Those under Section 34 of the Act [22 U.S.C. 2774] to the Secretary of State. To the extent the standards and criteria for credit and guaranty transactions are based upon national security and financial policies, the Secretary of State shall obtain the prior concurrence of the Secretary of Defense and the Secretary of the Treasury, respectively.

(i) Those under Section 35(a) of the Act [22 U.S.C. 2775(a)] to the Secretary of State.

(j) Those under Sections 36(a) and 36(b)(1) of the Act [22 U.S.C. 2776(a), (b)(1)], except with respect to the certification of an emergency as provided by subsection (b)(1), to the Secretary of Defense. The Secretary of Defense, in the implementation of the functions delegated to him under Sections 36(a) and (b)(1) shall consult with the Secretary of State, who shall, with respect to matters related to subparagraphs (D) and (I) of Section 36(b)(1), consult with the Director of the Arms Control and Disarmament Agency. With respect to those functions under Sections 36(a)(5) and (6), the Secretary of Defense shall consult with the Director of the Office of Management and Budget.

(k) Those under Sections 36(c) and (d) of the Act [22 U.S.C. 2776(c), (d)] to the Secretary of State.

(*l*) Those under Section 38 of the Act [22 U.S.C. 2778]:

(1) to the Secretary of State, except as otherwise provided in this subsection. Designations, including changes in designations, by the Secretary of State of items or categories of items which shall be considered as defense articles and defense services subject to export control under Section 38 shall have the concurrence of the Secretary of Defense. The authority to undertake activities to ensure compliance with established export conditions may be redelegated to the Secretary of Defense, or to the head of another department or agency as appropriate, which shall exercise such functions in consultation with the Secretary of State;

(2) to the Secretary of the Treasury, to the extent they relate to the control of the import of defense articles and defense services. In carrying out such functions, the Secretary of the Treasury shall be guided by the views of the Secretary of State on matters affecting world peace, and the external security and foreign policy of the United States. Designations including changes in designations, by the Secretary of the Treasury of items or categories of items which shall be considered as defense articles and defense services subject to import control under Section 38 of the Act [22 U.S.C. 2778] shall have the concurrence of the Secretary of State and the Secretary of Defense;

(3) to the Secretary of Commerce, to carry out on behalf of the Secretary of State, to the extent such functions involve Section 38(e) of the Act [22 U.S.C. 2778(e)] and are agreed to by the Secretary of State and the Secretary of Commerce.

(m) Those under Section 39(b) of the Act [22 U.S.C. 2779(b)] to the Secretary of State. In carrying out such functions, the Secretary of State shall consult with the Secretary of Defense as may be necessary to avoid interference in the application of Department of Defense regulations to sales made under Section 22 of the Act [22 U.S.C. 2762].

(n) Those under Section 40A of the Act [22 U.S.C. 2781], as added by the Antiterrorism and Effective Death Penalty Act of 1996 (Public Law 104–132), to the Secretary of State.

(*o*) Those under Sections 42(c) and (f) of the Act [22 U.S.C. 2791(c), (f)] to the Secretary of Defense. The Secretary of Defense shall obtain the concurrence of the Secretary of State and the Secretary of the Treasury on any determination proposed under the authority of Section 42(c) of the Act [22 U.S.C. 2791(c)].

(p) Those under Sections 52(b) and 53 of the Act [22 U.S.C. 2795a(b), 2795b] to the Secretary of Defense.

(q) Those under Sections 61 and 62(a) of the Act [22 U.S.C. 2796, 2796a(a)] to the Secretary of Defense.

(r) Those under Section 2(b)(6) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(6)) to the Secretary of State.

(s) Those under Section 588(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 (Public Law 100–461) [Oct. 1, 1988, 102 Stat. 2268–51], to the Secretary of Defense, except with respect to the determination of an emergency as provided by subsection (b)(3). The Secretary of Defense in implementation of the functions delegated to him under section 588(b) shall consult with the Secretary of State.

SEC. 2. *Coordination*. (a) In addition to the specific provisions of Section 1 of this Order, the Secretary of State and the Secretary of Defense, in carrying out the functions delegated to them under this Order, shall consult with each other and with the heads of other departments and agencies, including the Secretary of the Treasury, the Director of the United States International Development Cooperation Agency, the Director of the Arms Control and Disarmament Agency, and the Chairman of the Export-Import Bank, on matters pertaining to their responsibilities.

(b) In accordance with Section 2(b) of the Act [22 U.S.C. 2752(b)] and under the directions of the President, the Secretary of State, taking into account other United States activities abroad, shall be responsible for the continuous supervision and general direction of sales and exports under the Act, including but not limited to, the negotiation, conclusion, and termination of international agreements, and determining whether there shall be a sale to a country and the amount thereof, and whether there shall be delivery or other performance under such sale or export, to the end that sales and exports are integrated with other United States activities and the foreign policy of the United States is best served thereby.

SEC. 3. *Allocation of Funds*. Funds appropriated to the President for carrying out the Act shall be deemed to be allocated to the Secretary of Defense without any further action of the President.

SEC. 4. *Revocation*. Executive Order No. 11501, as amended, is revoked; except that, to the extent consist-

ent with this Order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, taken or entered into under the provisions of Executive Order No. 11501, as amended, and not revoked, superseded or otherwise made inapplicable, shall continue in full force and effect until amended, modified or terminated by appropriate authority.

§ 2752. Coordination with foreign policy

(a) Noninfringement of powers or functions of Secretary of State

Nothing contained in this chapter shall be construed to infringe upon the powers or functions of the Secretary of State.

(b) Responsibility for supervision and direction of sales, leases, financing, cooperative projects, and exports

Under the direction of the President, the Secretary of State (taking into account other United States activities abroad, such as military assistance, economic assistance, and the food for peace program) shall be responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports under this chapter, including, but not limited to, determining—

(1) whether there will be a sale to or financing for a country and the amount thereof;

(2) whether there will be a lease to a country;

(3) whether there will be a cooperative project and the scope thereof; and

(4) whether there will be delivery or other performance under such sale, lease, cooperative project, or export,

to the end that sales, financing, leases, cooperative projects, and exports will be integrated with other United States activities and to the end that the foreign policy of the United States would be best served thereby.

(c) Coordination among representatives of United States

The President shall prescribe appropriate procedures to assure coordination among representatives of the United States Government in each country, under the leadership of the Chief of the United States Diplomatic Mission. The Chief of the diplomatic mission shall make sure that recommendations of such representatives pertaining to sales are coordinated with political and economic considerations, and his comments shall accompany such recommendations if he so desires.

(Pub. L. 90–629, ch. 1, § 2, Oct. 22, 1968, 82 Stat. 1322; Pub. L. 94–329, title II, § 212(a)(2), June 30, 1976, 90 Stat. 745; Pub. L. 97–113, title I, § 109(b)(1), Dec. 29, 1981, 95 Stat. 1526; Pub. L. 99–83, title I, § 115(b)(1), Aug. 8, 1985, 99 Stat. 201; Pub. L. 99–145, title XI, § 1102(a)(2), (5), Nov. 8, 1985, 99 Stat. 710; Pub. L. 99–661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–661 repealed section 1102(a)(2) of Pub. L. 99–145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

1985—Subsec. (b). Pub. L. 99–83 amended subsec. (b) generally, substituting reference to the food for peace program for reference to food for freedom and adding financing and cooperative projects under this chapter to the list of responsibilities of the Secretary of State.

Pub. L. 99–145, § 1102(a)(2), which enacted amendments similar to those provided in Pub. L. 99–83, was repealed. See 1986 Amendments note above and Repeals; Effective Date note below.

1981—Subsec. (b). Pub. L. 97–113 substituted ''sales, leases,'' for ''sales'' in two places and ''such sale, lease,'' for ''such sale'' and inserted ''whether there shall be a lease to a country,'' after ''whether there shall be a sale to a country and the amount thereof,''.

1976—Subsec. (b). Pub. L. 94–329 inserted ''and exports'' after ''sales'' wherever appearing and ''and whether there shall be delivery or other performance under such sale or export,'' after ''thereof,''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

REPEALS; EFFECTIVE DATE

Pub. L. 99–145, title XI, § 1102(a)(5), Nov. 8, 1985, 99 Stat. 710, which provided for the repeal of the amendments made by § 1102(a) of Pub. L. 99–145, effective as of the effective date of similar amendments by Pub. L. 99–83, was repealed by Pub. L. 99–661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991.

§ 2753. Eligibility for defense services or defense articles

(a) Prerequisites for consent by President; report to Congress

No defense article or defense service shall be sold or leased by the United States Government under this chapter to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 2767 of this title), unless—

(1) the President finds that the furnishing of defense articles and defense services to such country or international organization will strengthen the security of the United States and promote world peace;

(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 2767 of this title), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specified member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained:

(3) the country or international organization shall have agreed that it will maintain the security of such article or service and will provide substantially the same degree of security protection afforded to such article or service by the United States Government; and

(4) the country or international organization is otherwise eligible to purchase or lease defense articles or defense services.

In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or

other implement of war to another country, the President shall not give his consent under paragraph (2) to the transfer unless the United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under paragraph (2) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President. The President shall promptly submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate on the implementation of each agreement entered into pursuant to clause (2) of this subsection.

(b) Necessity of consent by President

The consent of the President under paragraph (2) of subsection (a) of this section or under paragraph (1) of section 2314(a) of this title (as it relates to subparagraph (B) of such paragraph) shall not be required for the transfer by a foreign country or international organization of defense articles sold by the United States under this chapter if—

(1) such articles constitute components incorporated into foreign defense articles;

(2) the recipient is the government of a member country of the North Atlantic Treaty Organization, the Government of Australia, the Government of Japan, or the Government of New Zealand;

(3) the recipient is not a country designated under section 2371 of this title;

(4) the United States-origin components are not—

(A) significant military equipment (as defined in section 2794(9) of this title);

(B) defense articles for which notification to Congress is required under section 2776(b) of this title; and

(C) identified by regulation as Missile Technology Control Regime items; and

(5) the foreign country or international organization provides notification of the transfer of the defense articles to the United States Government not later than 30 days after the date of such transfer.

(c) Termination of credits, guaranties or sales; report of violation by President; national security exception; conditions for reinstatement

(1)(A) No credits (including participations in credits) may be issued and no guaranties may be extended for any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (i) by using such articles or services for a purpose not authorized under section 2754 of this title or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 2754 of this title for a purpose not authorized under such agreement; (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (iii) by failing to maintain the security of such articles or services.

(B) No cash sales or deliveries pursuant to previous sales may be made with respect to any foreign country under this chapter as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, or any predecessor Act, in substantial violation (either in terms of quantity or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act by using such articles or services for a purpose not authorized under section 2754 of this title or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 2754 of this title, for a purpose not authorized under such agreement.

(2) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3)(A) A country shall be deemed to be ineligible under subparagraph (A) of paragraph (1) of this subsection, or both subparagraphs (A) and (B) of such paragraph in the case of a violation described in both such paragraphs, if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution.

(B) Notwithstanding a determination by the President of ineligibility under subparagraph (B) of paragraph (1) of this subsection, cash sales and deliveries pursuant to previous sales may be made if the President certifies in writing to the Congress that a termination thereof would have significant adverse impact on United States security, unless the Congress adopts or has adopted a joint resolution pursuant to subparagraph (A) of this paragraph with respect to such ineligibility.

(4) A country shall remain ineligible in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(d) Submission of written certification to Congress; contents; classified material; effective date of consent; report to Congress; transfers not subject to procedures

(1) The President may not give his consent under paragraph (2) of subsection (a) of this section or under the third sentence of such subsection, or under section 2314(a)(1) or 2314(a)(4) of this title, to a transfer of any major defense equipment valued (in terms of its original acqui-

sition cost) at $14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, unless the President submits to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate a written certification with respect to such proposed transfer containing—

(A) the name of the country or international organization proposing to make such transfer,

(B) a description of the article or service proposed to be transferred, including its acquisition cost,

(C) the name of the proposed recipient of such article or service,

(D) the reasons for such proposed transfer, and

(E) the date on which such transfer is proposed to be made.

Any certification submitted to Congress pursuant to this paragraph shall be unclassified, except that information regarding the dollar value and number of articles or services proposed to be transferred may be classified if public disclosure thereof would be clearly detrimental to the security of the United States.

(2)(A) Except as provided in subparagraph (B), unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until 30 calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such 30-day period, a joint resolution prohibiting the proposed transfer.

(B) In the case of a proposed transfer to the North Atlantic Treaty Organization, or any member country of such Organization, Japan, Australia, or New Zealand, unless the President states in the certification submitted pursuant to paragraph (1) of this subsection that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, such consent shall not become effective until fifteen calendar days after the date of such submission and such consent shall become effective then only if the Congress does not enact, within such fifteen-day period, a joint resolution prohibiting the proposed transfer.

(C) If the President states in his certification under subparagraph (A) or (B) that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States, thus waiving the requirements of that subparagraph, the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate immediate consent to the transfer and a discussion of the national security interests involved.

(D)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(3)(A) The President may not give his consent to the transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more, the export of which has been licensed or approved under section 2778 of this title, unless before giving such consent the President submits to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a certification containing the information specified in subparagraphs (A) through (E) of paragraph (1). Such certification shall be submitted—

(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(ii) at least 30 calendar days before such consent is given in the case of a transfer to any other country,

unless the President states in his certification that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists (thus waiving the requirements of clause (i) or (ii), as the case may be, and of subparagraph (B)) the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that consent to the proposed transfer become effective immediately and a discussion of the national security interests involved.

(B) Consent to a transfer subject to subparagraph (A) shall become effective after the end of the 15-day or 30-day period specified in subparagraph (A)(i) or (ii), as the case may be, only if the Congress does not enact, within that period, a joint resolution prohibiting the proposed transfer.

(C)(i) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(ii) For the purpose of expediting the consideration and enactment of joint resolutions under this paragraph, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) This subsection shall not apply—

(A) to transfers of maintenance, repair, or overhaul defense services, or of the repair parts or other defense articles used in furnishing such services, if the transfer will not result in any increase, relative to the original specifications, in the military capability of

the defense articles and services to be maintained, repaired, or overhauled;

(B) to temporary transfers of defense articles for the sole purpose of receiving maintenance, repair, or overhaul; or

(C) to arrangements among members of the North Atlantic Treaty Organization or between the North Atlantic Treaty Organization and any of its member countries—

(i) for cooperative cross servicing, or

(ii) for lead-nation procurement if the certification transmitted to the Congress pursuant to section 2776(b) of this title with regard to such lead-nation procurement identified the transferees on whose behalf the lead-nation procurement was proposed.

(e) Transfers without consent of President; report to Congress

If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section or under section 2314 of this title, he shall report such information immediately to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate.

(f) Sales and leases to countries in breach of nuclear nonproliferation agreements and treaties

No sales or leases shall be made to any country that the President has determined is in material breach of its binding commitments to the United States under international treaties or agreements concerning the nonproliferation of nuclear explosive devices (as defined in section 6305(4) of this title) and unsafeguarded special nuclear material (as defined in section 6305(8) of this title).

(Pub. L. 90–629, ch. 1, § 3, Oct. 22, 1968, 82 Stat. 1322; Pub. L. 91–672, § 1, Jan. 12, 1971, 84 Stat. 2053; Pub. L. 93–189, § 25(2), Dec. 17, 1973, 87 Stat. 729; Pub. L. 93–559, § 45(a)(1), Dec. 30, 1974, 88 Stat. 1813; Pub. L. 94–329, title II, §§ 203(a), 204(a), (b)(1), title III, § 304(b), June 30, 1976, 90 Stat. 735, 736, 754, 755; Pub. L. 95–92, §§ 15–18, Aug. 4, 1977, 91 Stat. 622; Pub. L. 96–92, § 11, Oct. 29, 1979, 93 Stat. 705; Pub. L. 96–533, title I, § 101, Dec. 16, 1980, 94 Stat. 3131; Pub. L. 97–113, title I, §§ 101(a), 102(a), 109(b)(2), Dec. 29, 1981, 95 Stat. 1519, 1520, 1526; Pub. L. 99–83, title I, § 115(b)(2), title V, § 503(b), Aug. 8, 1985, 99 Stat. 201, 221; Pub. L. 99–145, title XI, § 1102(a)(3), (5), Nov. 8, 1985, 99 Stat. 710; Pub. L. 99–247, § 1(a), Feb. 12, 1986, 100 Stat. 9; Pub. L. 99–661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991; Pub. L. 100–461, title V, § 577, Oct. 1, 1988, 102 Stat. 2268–45; Pub. L. 101–222, § 2(b), Dec. 12, 1989, 103 Stat. 1896; Pub. L. 103–236, title VIII, § 822(a)(1), Apr. 30, 1994, 108 Stat. 511; Pub. L. 104–164, title I, §§ 141(a), (b), 142, July 21, 1996, 110 Stat. 1430, 1431, 1433.)

REFERENCES IN TEXT

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (d)(2)(D)(i), (3)(C)(i), is section 601(b) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–164, § 142, added subsec. (b).

Subsec. (d)(2)(A). Pub. L. 104–164, § 141(a)(1), struck out ", as provided for in sections 2776(b)(2) and 2776(b)(3) of this title" after "joint resolution".

Subsec. (d)(2)(B). Pub. L. 104–164, § 141(a)(2), substituted "joint resolution prohibiting the proposed transfer" for "law prohibiting the proposed transfer".

Subsec. (d)(2)(C), (D). Pub. L. 104–164, § 141(a)(3), added subpars. (C) and (D).

Subsec. (d)(3)(A). Pub. L. 104–164, § 141(b), designated existing provisions as subpar. (A), struck out "at least 30 calendar days" before "before giving such consent the President", substituted "a certification" for "a report" after "Committee on Foreign Relations of the Senate", and substituted "Such certification shall be submitted—

"(i) at least 15 calendar days before such consent is given in the case of a transfer to a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

"(ii) at least 30 calendar days before such consent is given in the case of a transfer to any other country,

unless the President states in his certification that an emergency exists which requires that consent to the proposed transfer become effective immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists (thus waiving the requirements of clause (i) or (ii), as the case may be, and of subparagraph (B)) the President shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that consent to the proposed transfer become effective immediately and a discussion of the national security interests involved." for "Such consent shall become effective then only if the Congress does not enact, within a 30-day period, a joint resolution, as provided for in sections 2776(c)(2) and 2776(c)(3) of this title prohibiting the proposed transfer."

Subsec. (d)(3)(B), (C). Pub. L. 104–164, § 141(b)(3), added subpars. (B) and (C).

1994—Subsec. (f). Pub. L. 103–236 added subsec. (f).

1989—Subsec. (f). Pub. L. 101–222 struck out subsec. (f) which directed termination of sales under this chapter to countries granting sanctuary to international terrorists. See section 2780 of this title.

1988—Subsec. (d)(2)(A). Pub. L. 100–461, § 577(1), substituted "joint resolution, as provided for in sections 2776(b)(2) and 2776(b)(3) of this title" for "law".

Subsec. (d)(3). Pub. L. 100–461, § 577(2), inserted at end "Such consent shall become effective then only if the Congress does not enact, within a 30-day period, a joint resolution, as provided for in sections 2776(c)(2) and 2776(c)(3) of this title prohibiting the proposed transfer."

1986—Subsec. (a). Pub. L. 99–661 repealed section 1102(a)(3) of Pub. L. 99–145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

Subsec. (d)(2)(A). Pub. L. 99–247, § 1(a)(1), substituted "enact, within such 30-day period, a law prohibiting" for "adopt, within such 30-day period, a concurrent resolution disapproving".

Subsec. (d)(2)(B). Pub. L. 99–247, § 1(a)(2), substituted "enact, within such fifteen-day period, a law prohibiting" for "adopt, within such fifteen-day period, a concurrent resolution disapproving".

1985—Subsec. (a). Pub. L. 99–83, § 115(b)(2), in introductory text and in par. (2) inserted provisions relating to cooperative projects, and in par. (3) inserted "or service" after "such article" in two places.

Pub. L. 99–145, § 1102(a)(3), which enacted amendments similar to those provided in Pub. L. 99–83, § 115(b)(2), was repealed. See 1986 Amendments note above and former section 1105(a)(5) of Pub. L. 99–145 set out as a Repeals; Effective Date note under section 2752 of this title.

Subsec. (f). Pub. L. 99–83, § 503(b), struck out ", credits, and guaranties" and ", credits, or guaranties" wherever appearing in pars. (1) and (2).

1981—Subsec. (a). Pub. L. 97–113, § 109(b)(2), substituted in introductory text "sold or leased" for "sold", and in par. (4) "purchase or lease" for "purchase".

Subsec. (d)(1). Pub. L. 97–113, § 101(a)(1), substituted in introductory text ", or under section 2314(a)(1) or 2314(a)(4) of this title, to a transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or any defense article or related training or other defense service valued (in terms of its original acquisition cost) at $50,000,000 or more," for "to a transfer of a defense article, or related training or other defense service, sold under this chapter and may not give his consent to such a transfer under section 2314(a)(1) or (a)(4) of this title", in subpar. (B) "a description of the article or service proposed to be transferred, including its acquisition cost" for "a description of the defense article or related training or other defense service proposed to be transferred, including the original acquisition cost of such defense article or related training or other defense service", in subpar. (C) "article or service" for "defense article or related training or other defense service", and in provision following subpar. (E) "articles or services" for "defense articles, or related training or other defense services,".

Subsec. (d)(2). Pub. L. 97–113, § 102(a), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), unless" for "Unless", and added subpar. (B).

Subsec. (d)(3). Pub. L. 97–113, § 101(a)(2), substituted "transfer of any major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more, or of any defense article or defense service valued (in terms of its original acquisition cost) at $50,000,000 or more" for "transfer to a third country of a defense article or a defense service valued (in terms of its original acquisition costs) at $25,000,000 or more, or of major defense equipment valued (in terms of its original acquisition costs) at $7,000,000 or more".

Subsec. (d)(4). Pub. L. 97–113, § 101(a)(3), struck out subpar. (D), which provided that subsec. (d) of this section not apply to transfers to the North Atlantic Treaty Organization, any member country of such organization, Japan, Australia, or New Zealand, of any major defense equipment valued (in terms of its original acquisition cost) at less than $7,000,000 or of any defense article or related training or other defense service valued (in terms of its original acquisition cost) at less than $25,000,000.

1980—Subsec. (d)(1). Pub. L. 96–533, § 101(a)(2)(A), substituted "pursuant to this paragraph" for "pursuant to this subsection".

Subsec. (d)(2). Pub. L. 96–533, § 101(a)(2)(B), substituted "paragraph (1) of this subsection" for "this subsection".

Subsec. (d)(3). Pub. L. 96–533, § 101(a)(1)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 96–533, § 101(a)(1)(A), (b), redesignated former par. (3) as (4) and, in par (4) as so redesignated, added subpar. (D).

1979—Subsec. (d)(3)(C). Pub. L. 96–92 made subsec. (d) of this section inapplicable to arrangements between the North Atlantic Treaty Organization and any of its member countries, incorporated existing text in provisions designated cl. (i) and added cl. (ii).

1977—Subsec. (b). Pub. L. 95–92, § 15, struck out subsec. (b) which related to prohibitions on sales, etc., to countries seizing or fining American fishing vessels for fishing in waters more than twelve miles from their coastlines.

Subsec. (d). Pub. L. 95–92, §§ 16, 17, redesignated existing provisions as par. (1), struck out ", 30 days prior to giving such consent," before "the President submits", redesignated pars. (1) to (5) as subpars. (A) to (E), respectively, and added pars. (2) and (3).

Subsec. (f). Pub. L. 95–92, § 18, added subsec. (f).

1976—Subsec. (a). Pub. L. 94–329, §§ 203(a), 204(b)(1), inserted in par. (2) "or related training or other defense service" after "article" wherever appearing and struck out provisions following par. (4) relating to the President's notification of his consent to transfer war implements to another country, in writing, to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate indicating his justification for the transfer and the particular war implement transferred.

Subsec. (c). Pub. L. 94–329, § 304(b)(1), provided that the President, by so stating in writing to Congress, or Congress, by joint resolution, terminate credits, guaranties or sales upon determining a violation, permitted cash sales and deliveries pursuant to previous sales to be made if the President certifies in writing to Congress that termination thereof would be adverse to national security unless Congress adopts or has adopted a joint resolution determining such eligibility, and specified conditions for reinstatement of eligibility.

Subsec. (d). Pub. L. 94–329, §§ 204(a), 304(b)(2), added subsec. (d). Former subsec. (d), which related to conditions for reinstatement after a determination of ineligibility, was repealed and is now covered by subsec. (c).

Subsec. (e). Pub. L. 94–329, §§ 204(a), 304(b)(2), added subsec. (e).

1974—Subsec. (d). Pub. L. 93–559 struck out first sentence provision respecting furnishing of sophisticated weapons to countries in violation of agreements pursuant to subsec. (a)(2) of this section, section 2314(a) of this title, or other similar provisions and substituted "in accordance with subsection (c) of this section" for "in accordance with this subsection".

1973—Subsec. (a). Pub. L. 93–189, § 25(2)(A)–(C), in par. (2) inserted requirement not to use or permit the use of such articles for purposes other than those for which furnished, redesignated former par. (3) as (4), added a new par. (3), and following par. (4), as so redesignated, inserted provisions relating to Presidential consideration of requests prior to consent under par. (2).

Subsecs. (c), (d). Pub. L. 93–189, § 25(2)(D), added subsecs. (c) and (d).

1971—Subsec. (b). Pub. L. 91–672 extended the retaliatory measures against countries seizing, taking custody or fining American vessels for fishing outside of twelve miles of their coast, to sales, credits, guaranties, and laid down a period of one year as the extent of such prohibition, and added assurances of future restraint received from such countries as an additional ground for waiver, and provided exception that the prohibition will not apply in cases governed by international agreements to which the United States is a party.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 141(f) of Pub. L. 104–164 provided that: "The amendments made by this section [amending this section and sections 2776, 2796a, and 2796b of this title] apply with respect to certifications required to be submitted on or after the date of the enactment of this Act [July 21, 1996]."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 203(a) of Pub. L. 94–329 provided that the amendment made by that section is effective July 1, 1976.

DELEGATION OF FUNCTIONS

Functions of President under this section, except subsecs. (a)(1), (b), (c)(3), (4), and (f), delegated to Secretary

of State, with Secretary authorized to make certain findings under subsec. (a)(1) in implementing functions delegated under subsecs. (a) and (d), by section 1(a) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

ELIGIBILITY OF BALTIC STATES FOR NONLETHAL DEFENSE ARTICLES

Pub. L. 102–511, title IX, § 906, Oct. 24, 1992, 106 Stat. 3356, provided that:

''(a) ELIGIBILITY.—Estonia, Latvia, and Lithuania shall each be eligible—

''(1) to purchase, or to receive financing for the purchase of, nonlethal defense articles—

''(A) under the Arms Export Control Act (22 U.S.C. 2751 et seq.), without regard to section 3(a)(1) of that Act [22 U.S.C. 2753(a)(1)], or

''(B) under section 503 of the Foreign Assistance Act of 1961 (22 U.S.C. 2311), without regard to the requirement in subsection (a) of that section for a Presidential finding; and

''(2) to receive nonlethal excess defense articles transferred under section 519 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321m), without regard to the restrictions in subsection (a) of that section.

''(b) DEFINITIONS.—As used in this section—

''(1) the term 'defense article' has the same meaning given to that term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)); and

''(2) the term 'excess defense article' has the same meaning given to that term in section 644(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2403(g)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2765, 2776, 2780, 2799b, 3281 of this title; title 10 section 4542.

§ 2754. Purposes for which military sales or leases by the United States are authorized; report to Congress

Defense articles and defense services shall be sold or leased by the United States Government under this chapter to friendly countries solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort: *Provided*, That none of the funds contained in this authorization shall be used to guarantee, or extend credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines and Korea unless the President determines that such financing is important to the national security of the United States and reports within thirty days each such determination to the Congress.

(Pub. L. 90–629, ch. 1, § 4, Oct. 22, 1968, 82 Stat. 1322; Pub. L. 97–113, title I, § 109(b)(3), Dec. 29, 1981, 95 Stat. 1526.)

AMENDMENTS

1981—Pub. L. 97–113 substituted ''sold or leased'' for ''sold'' in first sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2753 of this title; title 12 section 635.

§ 2755. Discrimination prohibited if based on race, religion, national origin, or sex

(a) Congressional declaration of policy

It is the policy of the United States that no sales should be made, and no credits (including participations in credits) or guaranties extended to or for any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of title 26) from participating in the furnishing of defense articles or defense services under this chapter on the basis of race, religion, national origin, or sex.

(b) Employment of personnel; required contractual provision

(1) No agency performing functions under this chapter shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(2) Each contract entered into by any such agency for the performance of any function under this chapter shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(c) Report by President; contents

The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any instance in which any United States person (as defined in section 7701(a)(30) of title 26) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the performance of any sale or licensed transaction under this chapter. Such reports shall include (1) a description of the facts and circumstances of any such discrimination, (2) the response thereto on the part of the United States or any agency or employee thereof, and (3) the result of such response, if any.

(d) Congressional request for information from President; information required; 60 day period; failure to supply information; termination or restriction of sale

(1) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall, within 60 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Secretary of State, with respect to the country designated in such request, setting forth—

(A) all the available information about the exclusionary policies or practices of the government of such country when such policies or practices are based upon race, religion, national origin or sex and prevent any such person from participating in the performance of any sale or licensed transaction under this chapter;

(B) the response of the United States thereto and the results of such response;

(C) whether, in the opinion of the President, notwithstanding any such policies or practices—

(i) extraordinary circumstances exist which necessitate a continuation of such sale or licensed transaction, and, if so, a description of such circumstances and the extent to which such sale or licensed transaction should be continued (subject to such conditions as Congress may impose under this section), and

(ii) on all the facts it is in the national interest of the United States to continue such sale or licensed transaction; and

(D) such other information as such committee may request.

(2) In the event a statement with respect to a sale or licensed transaction is requested pursuant to paragraph (1) of this subsection but is not transmitted in accordance therewith within 60 days after receipt of such request, such sale or licensed transaction shall be suspended unless and until such statement is transmitted.

(3)(A) In the event a statement with respect to a sale or licensed transaction is transmitted under paragraph (1) of this subsection, the Congress may at any time thereafter adopt a joint resolution terminating or restricting such sale or licensed transaction.

(B) Any such resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(C) The term ''certification'', as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under paragraph (1) of this subsection.

(Pub. L. 90–629, ch. 1, § 5, as added Pub. L. 94–329, title III, § 302(b), June 30, 1976, 90 Stat. 752; amended Pub. L. 95–105, title I, § 109(a)(5), Aug. 17, 1977, 91 Stat. 846; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–236, title I, § 162(f), Apr. 30, 1994, 108 Stat. 405; Pub. L. 103–437, § 9(a)(7), Nov. 2, 1994, 108 Stat. 4588.)

REFERENCES IN TEXT

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (d)(3)(B), (C), is section 601(b) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and was not classified to the Code.

AMENDMENTS

1994—Subsec. (d)(1). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations'' in introductory provisions.

Pub. L. 103–236 substituted ''Secretary of State'' for ''Assistant Secretary of State for Human Rights and Humanitarian Affairs'' in introductory provisions.

1986—Subsecs. (a), (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1977—Subsec. (d)(1). Pub. L. 95–105 substituted ''Assistant Secretary of State'' for ''Coordinator'' in introductory provisions.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by section 1(b) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2756. Foreign intimidation and harassment of individuals in United States

No letters of offer may be issued, no credits or guarantees may be extended, and no export licenses may be issued under this chapter with respect to any country determined by the President to be engaged in a consistent pattern of acts of intimidation or harassment directed against individuals in the United States. The President shall report any such determination promptly to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate.

(Pub. L. 90–629, ch. 1, § 6, as added Pub. L. 97–113, title I, § 115, Dec. 29, 1981, 95 Stat. 1528.)

SUBCHAPTER II—FOREIGN MILITARY SALES AUTHORIZATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2415 of this title.

§ 2761. Sales from stocks

(a) Eligible countries or international organizations; basis of payment; valuation of certain defense articles

(1) The President may sell defense articles and defense services from the stocks of the Department of Defense to any eligible country or inter-

national organization if such country or international organization agrees to pay in United States dollars—

(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(C) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2347 et seq.] or to any high-income foreign country (as described in that chapter), only those additional costs that are incurred by the United States Government in furnishing such assistance.

(2) For purposes of subparagraph (A) of paragraph (1), the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense.

(b) Time of payment

Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c) Personnel performing defense services sold as prohibited from performing combat activities

(1) Personnel performing defense services sold under this chapter may not perform any duties of a combatant nature, including any duties related to training and advising that may engage United States personnel in combat activities, outside the United States in connection with the performance of those defense services.

(2) Within forty-eight hours of the existence of, or a change in status of significant hostilities or terrorist acts or a series of such acts, which may endanger American lives or property, involving a country in which United States personnel are performing defense services pursuant to this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, classified if necessary, setting forth—

(A) the identity of such country;

(B) a description of such hostilities or terrorist acts; and

(C) the number of members of the United States Armed Forces and the number of United States civilian personnel that may be endangered by such hostilities or terrorist acts.

(d) Billings; interest after due date, rates of interest and extension of due date

If the President determines it to be in the national interest pursuant to subsection (b) of this section, billings for sales made under letters of offer issued under this section after June 30, 1976, may be dated and issued upon delivery of the defense article or rendering of the defense service and shall be due and payable upon receipt thereof by the purchasing country or international organization. Interest shall be charged on any net amount due and payable which is not paid within sixty days after the date of such billing. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the billing and shall be computed from the date of billing. The President may extend such sixty-day period to one hundred and twenty days if he determines that emergency requirements of the purchaser for acquisition of such defense articles or defense services exceed the ready availability to the purchaser of funds sufficient to pay the United States in full for them within such sixty-day period and submits that determination to the Congress together with a special emergency request for the authorization and appropriation of additional funds to finance such purchases under this chapter.

(e) Charges; reduction or waiver

(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 2762 of this title shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 2792(b) of this title and section 2792(c) of this title;

(B) a proportionate amount of any nonrecurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] or from funds made available on a nonrepayable basis under section 2763 of this title); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(2)(A) The President may reduce or waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under coproduction arrangements.

(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

(3)(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the Maintenance and Supply Agency of the North Atlantic Treaty Organization in support of—

(i) a weapon system partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 2792(b) of this title in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term ''weapon system partnership agreement'' means an agreement between two or more member countries of the Maintenance and Supply Agency of the North Atlantic Treaty Organization that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of a specific weapon system common to the participating countries; and

(ii) the term ''NATO/SHAPE project'' means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

(f) Public inspection of contracts

Any contracts entered into between the United States and a foreign country under the authority of this section or section 2762 of this title shall be prepared in a manner which will permit them to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g) North Atlantic Treaty Organization standardization agreements, similar agreements; reimbursement for costs; transmittal to Congress

The President may enter into North Atlantic Treaty Organization standardization agreements in carrying out section 814 of the Act of October 7, 1975 (Public Law 94–106), and may enter into similar agreements with countries which are major non-NATO allies, for the cooperative furnishing of training on bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.

(h) Reciprocal quality assurance, inspection, contract administrative services, and contract audit defense services; catalog data and services

(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after October 29, 1979, by, or under this chapter on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2) In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, to the North Atlantic Treaty Organization or to any member government of that Organization if that Organization or member government provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

(i) Sales affecting combat readiness of Armed Forces; statement to Congress; limitation on delivery

(1) Sales of defense articles and defense services which could have significant adverse effect

on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the Speaker of the House of Representatives and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section or under authority of subchapter II–B of this chapter, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

(A) the country or international organization to which the sale is proposed to be made;

(B) the amount of the proposed sale;

(C) a description of the defense article or service proposed to be sold;

(D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States; and

(E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certification required to be transmitted by paragraph[1] (E) of paragraph (1) is in effect.

(j) Repealed. Pub. L. 104–106, div. A, title I, § 112, Feb. 10, 1996, 110 Stat. 206

(k) Effect of sales of excess defense articles on national technology and industrial base

Before entering into the sale under this chapter of defense articles that are excess to the stocks of the Department of Defense, the President shall determine that the sale of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.

(*l*) Repair of defense articles

(1) In general

The President may acquire a repairable defense article from a foreign country or international organization if such defense article—

(A) previously was transferred to such country or organization under this chapter;

(B) is not an end item; and

(C) will be exchanged for a defense article of the same type that is in the stocks of the Department of Defense.

(2) Limitation

The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter.

(3) Requirement

(A) The foreign government or international organization receiving a new or repaired defense article in exchange for a repairable defense article pursuant to paragraph (1) shall, upon the acceptance by the United States Government of the repairable defense article being returned, be charged the total cost associated with the repair and replacement transaction.

(B) The total cost charged pursuant to subparagraph (A) shall be the same as that charged the United States Armed Forces for a similar repair and replacement transaction, plus an administrative surcharge in accordance with subsection (e)(1)(A) of this section.

(4) Relationship to certain other provisions of law

The authority of the President to accept the return of a repairable defense article as provided in subsection (a) of this section shall not be subject to chapter 137 of title 10 or any other provision of law relating to the conclusion of contracts.

(m) Return of defense articles

(1) In general

The President may accept the return of a defense article from a foreign country or international organization if such defense article—

(A) previously was transferred to such country or organization under this chapter;

(B) is not significant military equipment (as defined in section 2794(9) of this title); and

(C) is in fully functioning condition without need of repair or rehabilitation.

(2) Limitation

The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter; and

[1] So in original. Probably should be ''subparagraph''.

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter.

(3) Credit for transaction

Upon acquisition and acceptance by the United States Government of a defense article under paragraph (1), the appropriate Foreign Military Sales account of the provider shall be credited to reflect the transaction.

(4) Relationship to certain other provisions of law

The authority of the President to accept the return of a defense article as provided in paragraph (1) shall not be subject to chapter 137 of title 10 or any other provision of law relating to the conclusion of contracts.

(Pub. L. 90–629, ch. 2, § 21, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 94–329, title II, §§ 205, 206, June 30, 1976, 90 Stat. 736, 738; Pub. L. 95–384, § 16, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96–92, § 12, Oct. 29, 1979, 93 Stat. 705; Pub. L. 96–533, title I, §§ 102, 103, 105(b)(1), 115(b)(2), Dec. 16, 1980, 94 Stat. 3132, 3134, 3140; Pub. L. 97–113, title I, §§ 103, 104, Dec. 29, 1981, 95 Stat. 1521; Pub. L. 97–392, § 3, Dec. 29, 1982, 96 Stat. 1963; Pub. L. 98–473, title I, § 101(1) [title III, § 301], Oct. 12, 1984, 98 Stat. 1884, 1895; Pub. L. 99–83, title I, §§ 107(a), 108–111, Aug. 8, 1985, 99 Stat. 196, 197; Pub. L. 100–202, § 101(e) [title V, § 580], Dec. 22, 1987, 101 Stat. 1329–131, 1329–181; Pub. L. 100–456, div. A, title X, § 1002, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101–165, title IX, § 9104(c), Nov. 21, 1989, 103 Stat. 1152; Pub. L. 102–25, title VII, § 705(d)(1), Apr. 6, 1991, 105 Stat. 120; Pub. L. 102–484, div. A, title I, § 114, Oct. 23, 1992, 106 Stat. 2333; Pub. L. 103–236, title VII, § 731(d), Apr. 30, 1994, 108 Stat. 503; Pub. L. 104–106, div. A, title I, § 112, div. D, title XLIII, § 4303(a), Feb. 10, 1996, 110 Stat. 206, 658; Pub. L. 104–164, title I, §§ 104(b)(1), 112(c)(2), 147(a)(3)(A), (b), 152(a), (b), July 21, 1996, 110 Stat. 1426, 1428, 1435, 1438, 1439; Pub. L. 104–201, div. B, title XXVIII, § 2802(d)(2), Sept. 23, 1996, 110 Stat. 2787.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1)(C) and (c)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. Chapter 5 of part II of such Act is classified generally to part V of subchapter II (§ 2347 et seq.) of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 814 of the act of October 7, 1975 (Public Law 94–106), referred to in subsec. (g), is not classified to the Code.

CODIFICATION

Amendment by Pub. L. 98–473 is based on section 102 of S. 2346, Ninety-eighth Congress, as introduced in the Senate Feb. 27, 1984, which was enacted into permanent law by Pub. L. 98–473.

AMENDMENTS

1996—Subsec. (a)(1)(C). Pub. L. 104–164, § 112(c)(2), inserted ''or to any high-income foreign country (as described in that chapter)''.

Subsec. (e)(2). Pub. L. 104–106, § 4303(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (g). Pub. L. 104–164, § 147(a)(3)(A), (b), substituted ''similar agreements with countries'' for ''similar agreements with Japan, Australia, and New Zealand, and with other countries'' in first sentence and struck out at end ''As used in this subsection, the term 'major non-NATO allies' means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10.''

Subsec. (h)(1)(B). Pub. L. 104–201 substituted ''Security Investment program'' for ''Infrastructure Program''.

Subsec. (j). Pub. L. 104–106, § 112, struck out heading and text of subsec. (j). Text read as follows:

''(1) Funds received from the sale of tanks under this section shall be available for the upgrading of tanks for fielding to the Army.

''(2) Funds received from the sale of infantry fighting vehicles or armored personnel carriers under this section shall be available for the upgrading of infantry fighting vehicles or armored personnel carriers for fielding to the Army.

''(3) Paragraphs (1) and (2) apply only to the extent provided in advance in appropriations Acts.

''(4) This subsection applies with respect to funds received from sales occurring after September 30, 1989.''

Subsec. (k). Pub. L. 104–164, § 104(b)(1), substituted ''the President shall determine that the sale of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred.'' for ''the President shall first consider the effects of the sale of the articles on the national technology and industrial base, particularly the extent, if any, to which the sale reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the excess defense articles are sold.''

Subsec. (*l*). Pub. L. 104–164, § 152(a), added subsec. (*l*).

Subsec. (m). Pub. L. 104–164, § 152(b), added subsec. (m).

1994—Subsec. (k). Pub. L. 103–236 added subsec. (k).

1992—Subsec. (j). Pub. L. 102–484 added subsec. (j).

1991—Subsec. (g). Pub. L. 102–25 substituted ''section 2350a(i)(3) of title 10'' for ''section 2767a of this title''.

1989—Subsec. (e)(1)(A). Pub. L. 101–165, § 9104(c)(1), inserted reference to section 2792(b) and (c) of this title.

Subsec. (e)(1)(B). Pub. L. 101–165, § 9104(c)(2), (3), redesignated subpar. (C) as (B) and inserted exception for equipment wholly paid for from funds transferred under the Foreign Assistance Act of 1961 or from funds made available under section 2763 of this title. Former subpar. (B), which included charges for any use of plant and production equipment in connection with defense articles, was struck out.

Subsec. (e)(1)(C), (D). Pub. L. 101–165, § 9104(c)(3), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (e)(2). Pub. L. 101–165, § 9104(c)(4), substituted reference to par. (1)(B) for reference to pars. (1)(B) and (1)(C).

1988—Subsec. (e)(3). Pub. L. 100–456 added par. (3).

1987—Subsec. (g). Pub. L. 100–202 inserted ''and with other countries which are major non-NATO allies,'' after ''New Zealand,'' and inserted last sentence defining ''major non-NATO allies''.

1985—Subsec. (a)(1). Pub. L. 99–83, § 107(a)(1), (2), designated existing provisions as par. (1), and substituted ''(A)'', ''(B)'', and ''(C)'' for ''(1)'', ''(2)'', and ''(3)'', respectively.

Subsec. (a)(1)(C). Pub. L. 99–83, § 108(a), inserted provisions relating to training sold to a purchaser receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

Subsec. (a)(2). Pub. L. 99–83, § 107(a)(3), added par. (2).

Subsec. (e)(1)(A). Pub. L. 99–83, § 109, inserted provisions excluding pro rata share of fixed base operation costs.

Subsec. (g). Pub. L. 99–83, § 108(b), added subsec. (g).

Subsec. (h)(1). Pub. L. 99–83, §§110, 111(1), (2), designated existing provisions as par. (1), inserted applicability to contract administrative services, and substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively.

Subsec. (h)(2). Pub. L. 99–83, §111(3), added par. (2).

1984—Subsec. (a)(3). Pub. L. 98–473 struck out ''sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961'' after ''in the case of training''.

Subsec. (g). Pub. L. 98–473 struck out subsec. (g) which related to NATO standardization agreements and similar agreements with Japan, Australia, and New Zealand.

1982—Subsec. (i)(1). Pub. L. 97–392 inserted reference to proposals to sell under the authority of subchapter II–B of this chapter.

1981—Subsec. (c)(2). Pub. L. 97–113, §103, substituted provision for a report within forty-eight hours of existence of or change in status of significant hostilities or terrorist acts or series of such acts, which may endanger American lives or property for provision for a report within 48 hours after outbreak of significant hostilities and omitted provision for statement of relation between the defense services and hostilities in the country, the location and precise nature of personnel activities, and likelihood of personnel engagement in the hostilities.

Subsec. (e)(2). Pub. L. 97–113, §104, authorized reduction or waiver of charges for use and nonrecurring research, development, and production costs respecting sales significantly advancing United States interests in standardization with Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries.

1980—Subsec. (a)(3). Pub. L. 96–533, §115(b)(2), included payment, in case of training sold to a purchaser currently receiving international military education and training assistance, of additional costs incurred by the United States Government in furnishing the training.

Subsec. (c). Pub. L. 96–533, §102, designated existing provision as par. (1), substituted ''training and advising that may engage United States personnel in combat activities'' for ''training, advising, or otherwise providing assistance regarding combat activities'', and added par. (2).

Subsec. (g). Pub. L. 96–533, §103, authorized the President to enter into standardization agreements with Japan, Australia, and New Zealand.

Subsec. (h). Pub. L. 96–533, §105(b)(1), substituted ''defense articles, defense services, or design and construction services'' for ''defense articles or defense services'' in two places.

1979—Subsecs. (h), (i). Pub. L. 96–92 added subsec. (h) and redesignated former subsec. (h) as (i).

1978—Subsec. (e)(1)(D). Pub. L. 95–384 added subpar. (D).

1976—Subsec. (a). Pub. L. 94–329, §205, designated existing provisions as subsec. (a) and substituted provisions authorizing President to sell defense articles and defense services from Department of Defense stocks to eligible countries and international organizations who agree to pay specified values for such articles and services in United States dollars, for provisions requiring that payment for defense articles and defense services from stocks be made in advance, or if in the best interest of the United States as determined by the President, within a reasonable period not to exceed 120 days after delivery of the articles or rendering of the services.

Subsecs. (b) to (h). Pub. L. 94–329, §§205, 206, added subsecs. (b) to (h).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4303(b)–(d) of Pub. L. 104–106 provided that:

''(b) CONDITIONS.—Subsection (a) [amending this section] shall be effective only if—

''(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

''(2) there is enacted qualifying offsetting legislation.

''(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation [Sept. 23, 1996].

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'qualifying offsetting legislation' means legislation that includes provisions that—

''(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

''(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

''(C) are included in full on the PayGo scorecard.

''(2) The term 'PayGo scorecard' means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902(d)].''

[Qualifying offsetting legislation was enacted by Pub. L. 104–201, §3303, set out as a note under section 98d of Title 50, War and National Defense.]

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

REGULATIONS

Section 152(c) of Pub. L. 104–164 provided that: ''Under the direction of the President, the Secretary of Defense shall promulgate regulations to implement subsections (*l*) and (m) of section 21 of the Arms Export Control Act [22 U.S.C. 2761(*l*), (m)], as added by this section.''

DELEGATION OF FUNCTIONS

Functions of President under this section, except the last sentence of subsec. (d) and subsec. (i), delegated to Secretary of Defense by section 1(c) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2291c, 2311, 2321i, 2751, 2765, 2767, 2775, 2776, 2777, 2791, 2792, 2794, 2795 of this title; title 10 sections 114, 2350c, 2552.

§ 2762. Procurement for cash sales

(a) Authority of President; dependable undertaking by foreign country or international organization; interest rates

Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under

all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) Issuance of letters of offer under emergency determination; availability of appropriations for payment

The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this chapter. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

(c) Applicability of Renegotiation Act of 1951

The provisions of the Renegotiation Act of 1951 [50 App. U.S.C. 1211 et seq.] do not apply to procurement contracts heretofore or hereafter entered into under this section, section 2769 of this title, or predecessor provisions of law.

(d) Competitive pricing

Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(Pub. L. 90–629, ch. 2, § 22, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 93–189, § 25(3), Dec. 17, 1973, 87 Stat. 730; Pub. L. 94–329, title II, § 207, June 30, 1976, 90 Stat. 738; Pub. L. 95–384, § 17, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96–533, title I, § 105(b)(2), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 104–107, title V, § 531A(a), Feb. 12, 1996, 110 Stat. 731.)

REFERENCES IN TEXT

The Renegotiation Act of 1951, referred to in subsec. (c), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended, which was classified principally to section 1211 et seq. of Title 50, Appendix, War and National Defense, prior to its omission from the Code. See Codification note set out under section 1211 of Title 50, Appendix.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–107 added subsec. (d).

1980—Subsec. (c). Pub. L. 96–533 substituted ''procurement contracts'' for ''contracts for the procurement of defense articles and defense services'' and inserted reference to contracts entered into under section 2769 of this title.

1978—Subsec. (c). Pub. L. 95–384 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–329, § 207(a), inserted provisions requiring interest to be charged on any net amount a country or international organization is in arrears and the rate of interest to be determined by the Secretary of Treasury considering current average market yield of short-term obligations of United States on a particular day.

Subsec. (b). Pub. L. 94–329, § 207(b), substituted provisions authorizing President to issue letters of offer with provisions for billing on delivery of article or rendering of service and payment within 120 days after billing date where President determines that emergency conditions exist, for provisions authorizing President to accept a dependable undertaking of a foreign country or international organization with respect to sales of defense articles and services and to make payment within 120 days of delivery of article or rendering of service.

1973—Pub. L. 93–189 designated text preceding first proviso as subsec. (a) and inserted ''Except as otherwise provided in this section,'' before ''the President'', designated first proviso as subsec. (b) and inserted reference to acceptance of a dependable undertaking of a foreign country or international organization, and struck out further provisions setting forth Presidential powers with respect to sales agreements with and payments by purchasing countries or international organizations.

EFFECTIVE DATE OF 1996 AMENDMENT; IMPLEMENTING REGULATIONS

Section 531A(b) of Pub. L. 104–107 provided that: ''Section 22(d) of the Arms Export Control Act [subsec. (d) of this section], as added by subsection (a)—

''(1) shall take effect on the 60th day following the date of the enactment of this Act [Feb. 12, 1996];

''(2) shall be applicable only to contracts made in implementation of sales made after such effective date; and

''(3) shall be implemented by revised procurement regulations, which shall be issued prior to such effective date.''

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

DIRECT COSTS ALLOWABLE

Pub. L. 105–118, title V, § 535, Nov. 26, 1997, 111 Stat. 2416, provided that: ''Direct costs associated with meeting a foreign customer's additional or unique requirements will continue to be allowable under contracts under section 22(d) of the Arms Export Control Act [22 U.S.C. 2762(d)]. Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 533A], Sept. 30, 1996, 110 Stat. 3009–121, 3009–153.

Pub. L. 104–107, title V, § 531A(c), Feb. 12, 1996, 110 Stat. 731.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2291c, 2311, 2751, 2767, 2775, 2776, 2777, 2779, 2791, 2795 of this title.

§ 2763. Credit sales

(a) Financing procurement of defense articles and services, and design and construction services

The President is authorized to finance the procurement of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations, on such terms and conditions as he may determine consistent with the requirements of this section. Notwithstanding any other provision of law, and subject to the regular notification requirements of the Committees on Appropriations, the authority of this section may be used to provide financing to Israel and Egypt for the procurement by leasing (including leasing with an option to purchase) of defense articles from United States commercial suppliers, not including Major Defense Equipment (other than helicopters and other types of aircraft having possible civilian application), if the President determines that there are compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than by government-to-government sale under this chapter.

(b) Repayment period

The President shall require repayment in United States dollars within a period not to exceed twelve years after the loan agreement with the country or international organization is signed on behalf of the United States Government, unless a longer period is specifically authorized by statute for that country or international organization.

(c) Interest rate; definitions

(1) The President shall charge interest under this section at such rate as he may determine, except that such rate may not be less than 5 percent per year.

(2) For purposes of financing provided under this section—

(A) the term ''concessional rate of interest'' means any rate of interest which is less than market rates of interest; and

(B) the term ''market rate of interest'' means any rate of interest which is equal to or greater than the current average interest rate (as of the last day of the month preceding the financing of the procurement under this section) that the United States Government pays on outstanding marketable obligations of comparable maturity.

(d) Participations in credits

References in any law to credits extended under this section shall be deemed to include reference to participations in credits.

(e) Payments on account of prior credits or loans

(1) Funds made available to carry out this section may be used by a foreign country to make payments of principal and interest which it owes to the United States Government on account of credits previously extended under this section or loans previously guaranteed under section 2764 of this title, subject to paragraph (2).

(2) Funds made available to carry out this section may not be used for prepayment of principal or interest pursuant to the authority of paragraph (1).

(f) Audit of certain private firms

For each fiscal year, the Secretary of Defense, as requested by the Director of the Defense Security Assistance Agency, shall conduct audits on a nonreimbursable basis of private firms that have entered into contracts with foreign governments under which defense articles, defense services, or design and construction services are to be procured by such firms for such governments from financing under this section.

(g) Notification requirements with respect to cash flow financing

(1) For each country and international organization that has been approved for cash flow financing under this section, any letter of offer and acceptance or other purchase agreement, or any amendment thereto, for a procurement of defense articles, defense services, or design and construction services in excess of $100,000,000 that is to be financed in whole or in part with funds made available under this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] shall be submitted to the congressional committees specified in section 634A(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2394–1(a)] in accordance with the procedures applicable to reprogramming notifications under that section.

(2) For purposes of this subsection, the term ''cash flow financing'' has the meaning given such term in subsection (d) of section 2765 of this title.

(h) Limitation on use of funds for direct commercial contracts

Of the amounts made available for a fiscal year to carry out this section, not more than $100,000,000 for such fiscal year may be made available for countries other than Israel and Egypt for the purpose of financing the procurement of defense articles, defense services, and design and construction services that are not sold by the United States Government under this chapter.

(Pub. L. 90–629, ch. 2, § 23, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93–559, § 45(a)(2), Dec. 30, 1974, 88 Stat. 1813; Pub. L. 94–329, title II, § 208(a), June 30, 1976, 90 Stat. 739; Pub. L. 96–533, title I, § 105(b)(3), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 99–83, title I, § 102, Aug. 8, 1985, 99 Stat. 195; Pub. L. 100–202, § 101(e) [title V, § 572], Dec. 22, 1987, 101 Stat. 1329–131, 1329–176; Pub. L. 101–513, title V, § 580, Nov. 5, 1990, 104 Stat. 2045; Pub. L. 104–164, title I, § 102(a)–(c), July 21, 1996, 110 Stat. 1422.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (g)(1), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsecs. (f) to (g). Pub. L. 104–164 added subsecs. (f) to (g).

1990—Subsec. (e). Pub. L. 101–513 added subsec. (e).

1987—Subsec. (a). Pub. L. 100–202 inserted sentence at end authorizing financing to Israel and Egypt for com-

mercial leasing of defense articles, not including Major Defense Equipment, with exception for certain aircraft, upon a Presidential determination that there are compelling foreign policy or national defense reasons for such leasing.

1985—Pub. L. 99–83 amended section generally. Prior to amendment, section read as follows: ''The President is authorized to finance procurements of defense articles, defense services, and design and construction services by friendly foreign countries and international organizations on terms requiring the payment to the United States Government in United States dollars of—

''(1) the value of such articles or services within a period not to exceed twelve years after the delivery of such articles or the rendering of such services; and

''(2) interest on the unpaid balance of that obligation for payment of the value of such articles or services, at a rate equivalent to the current average interest rate, as of the last day of the month preceding the financing of such procurement, that the United States Government pays on outstanding marketable obligations of comparable maturity, unless the President certifies to Congress that the national interest requires a lesser rate of interest and states in the certification the lesser rate so required and the justification therefor.''

1980—Pub. L. 96–533 substituted ''defense articles, defense services, and design and construction services'' for ''defense articles and defense services''.

1976—Par. (1). Pub. L. 94–329 substituted ''twelve years'' for ''ten years''.

1974—Pub. L. 93–559 incorporated existing provisions in cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 208(b) of Pub. L. 94–329 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to financing under agreements entered into on or after the date of enactment of this Act [June 30, 1976] for the procurement of defense articles to be delivered, or defense services to be rendered, after such date.''

DELEGATION OF FUNCTIONS

Functions of President under this section and section 580 of Pub. L. 100–461, see Similar Provisions note below, except those functions relating to determinations of a rate of interest which is less than the market rate, delegated to Secretary of Defense, to be exercised in consultation with Secretary of State and Secretary of the Treasury, by section 1(e) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SIMILAR PROVISIONS

Provisions similar to those in last sentence of subsec. (a) of this section are contained in the following appropriation acts:

Pub. L. 105–118, title V, § 528, Nov. 26, 1997, 111 Stat. 2413.

Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 528], Sept. 30, 1996, 110 Stat. 3009–121, 3009–149.

Pub. L. 104–107, title V, § 528, Feb. 12, 1996, 110 Stat. 730.

Pub. L. 103–306, title V, § 530, Aug. 23, 1994, 108 Stat. 1635.

Pub. L. 103–87, title V, § 530, Sept. 30, 1993, 107 Stat. 954.

Pub. L. 102–391, title V, § 558, Oct. 6, 1992, 106 Stat. 1676.

Pub. L. 101–513, title V, § 561, Nov. 5, 1990, 104 Stat. 2026.

Pub. L. 101–167, title V, § 571, Nov. 21, 1989, 103 Stat. 1245.

Pub. L. 100–461, title V, § 580, Oct. 1, 1988, 102 Stat. 2268–48.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2291c, 2311, 2321j, 2360, 2761, 2764, 2771, 2774, 2775, 2776, 2777, 2791, 5854 of this title.

§ 2764. Guaranties

(a) Guaranty against political and credit risks of nonpayment

The President may guarantee any individual, corporation, partnership, or other juridical entity doing business in the United States (excluding United States Government agencies other than the Federal Financing Bank) against political and credit risks of nonpayment arising out of their financing of credit sales of defense articles, defense services, and design and construction services to friendly countries and international organizations. Fees shall be charged for such guaranties.

(b) Sale of promissory notes of friendly countries and international organizations; guaranty of payment

The President may sell to any individual, corporation, partnership, or other juridical entity (excluding United States Government agencies other than the Federal Financing Bank) promissory notes issued by friendly countries and international organizations as evidence of their obligations to make repayments to the United States on account of credit sales financed under section 2763 of this title, and may guarantee payment thereof.

(c) Guaranty Reserve Fund; payment of guaranties; guaranty reserve below prescribed amount

Funds obligated under this section before December 16, 1980, which constitute a single reserve for the payment of claims under guaranties issued under this section shall remain available for expenditure for the purposes of this section on and after that date. That single reserve may, on and after August 8, 1985, be referred to as the ''Guaranty Reserve Fund''. Funds provided for necessary expenses to carry out the provisions of section 2763 of this title and of section 2311 of this title may be used to pay claims on the Guaranty Reserve Fund to the extent that funds in the Guaranty Reserve Fund are inadequate for that purpose. For purposes of any provision in this chapter or any other Act relating to a prohibition or limitation on the availability of funds under this chapter, whenever a guaranty is issued under this section, the principal amount of the loan so guaranteed shall be deemed to be funds made available for use under this chapter. Any guaranties issued hereunder shall be backed by the full faith and credit of the United States.

(Pub. L. 90–629, ch. 2, § 24, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 93–189, § 25(4), Dec. 17, 1973, 87 Stat. 730; Pub. L. 93–559, § 45(a)(3), (4), Dec. 30, 1974, 88 Stat. 1814; Pub. L. 96–533, title I, §§ 104(a), 105(b)(3), Dec. 16, 1980, 94 Stat. 3132, 3134; Pub. L. 99–83, title I, § 106(b), (c), Aug. 8, 1985, 99 Stat. 196; Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 409.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–71, which directed that the second par. be struck out and a new one-sentence par. be inserted, was executed to reflect the probable intent of Congress by substituting the new sentence for the third sentence which read as follows: ''Funds authorized to be appropriated by section 2771(a) of this title to carry out this chapter which are allocated for credits at market rates of interest may be used to pay claims under such guarantees to the extent funds in the Guaranty Reserve Fund are inadequate for that purpose.''

1985—Subsec. (c). Pub. L. 99–83 inserted provisions authorizing the single reserve to be termed the ''Guaranty Reserve Fund'', and substituted provisions relating to payment of claims under guarantees, for provisions relating to report to Congress respecting any payment of claims reducing the single reserve.

1980—Subsec. (a). Pub. L. 96–533, § 105(b)(3), substituted ''defense articles, defense services, and design and construction services'' for ''defense articles and defense services''.

Subsec. (c). Pub. L. 96–533, § 104(a), substituted provisions making funds obligated before Dec. 16, 1980 available for expenditure after such date for payment of guaranteed claims, requiring the President to report to Congress the reduction of the single reserve below $750,000,000 with recommendation for an appropriations authorization of additional funds and deeming the principal amount of a guaranteed loan to be funds made available for use under this chapter for purposes of any limitation on availability of funds for prior provisions for obligation of available funds in an amount equal to 10 per centum of principal amount of contractual liability related to a guaranty under this section, making such funds a single reserve for payment of guaranteed claims, and providing for transfer of any funds deobligated during any current fiscal year to the general fund of the Treasury.

1974—Subsecs. (a), (b). Pub. L. 93–559, § 45(a)(3), inserted ''other than the Federal Financing Bank'' in parenthetical text.

Subsec. (c). Pub. L. 93–559, § 45(a)(4), substituted ''10'' for ''25'' in two places.

1973—Subsec. (c). Pub. L. 93–189 substituted ''to carry out this chapter'' for ''pursuant to section 2771 of this title'' and inserted ''principal amount of'' before ''contractual liability'' wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT; ADJUSTMENT OF OBLIGATIONS CHARGED AGAINST APPROPRIATIONS; CREDIT FOR FISCAL YEAR 1975 APPROPRIATIONS

Section 45(b) of Pub. L. 93–559 provided that: ''The amendment made by paragraph (4) of subsection (a) [amending this section] shall take effect on July 1, 1974. Obligations initially charged against appropriations made available for purposes authorized by section 31(a) of the Foreign Military Sales Act [section 2771(a) of this title] after June 30, 1974, and prior to the enactment of this section [Dec. 30, 1974] in an amount equal to 25 per centum of the principal amount of contractual liability related to guaranties issued pursuant to section 24(a) of that Act [subsec. (a) of this section] shall be adjusted to reflect such amendment with proper credit to the appropriations made available in the fiscal year 1975 to carry out that Act [this chapter].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, with Secretary of Defense required to consult with Secretary of State and Secretary of the Treasury in implementing delegated functions, by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

FOREIGN MILITARY SALES DEBT REFORM

Pub. L. 102–145, § 118, as added by Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 93, provided that the authority and conditions provided under the heading ''Foreign Military Sales Debt Reform'' in H.R. 2621, One Hundred Second Congress, 1st session, as passed by the House of Representatives on June 19, 1991, shall be applicable to funds appropriated by Pub. L. 102–145 (and are hereby enacted) in lieu of the authority and conditions provided under the heading ''Foreign Military Sales Debt Reform'' in Pub. L. 101–513 [set out below]. Provisions under the heading ''Foreign Military Sales Debt Reform'' in H.R. 2621, as referred to above, provided that: ''Subsection (b) under the heading 'Foreign Military Sales Debt Reform' in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100–202, § 101(e) [title III, § 301], set out below], is hereby repealed.''

Pub. L. 101–513, title III, Nov. 5, 1990, 104 Stat. 1999, provided that: ''Funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [Pub. L. 100–202, § 101(e) [title III], set out below], for obligation and expenditure after October 1, 1988, subject to a Presidential budget request, under the heading 'Foreign Military Sales Debt Reform', subsection (b) 'Interest Rate Reduction' shall be available, subject to the same conditions and provisos, only after October 1, 1991.'' Similar provisions were contained in the following prior appropriation acts:

Pub. L. 101–167, title III, Nov. 21, 1989, 103 Stat. 1214.
Pub. L. 100–461, title III, Oct. 1, 1988, 102 Stat. 2268–18.

Pub. L. 100–202, § 101(e) [title III], Dec. 22, 1987, 101 Stat. 1329–131, 1329–148, as amended by Pub. L. 101–167, title III, Nov. 21, 1989, 103 Stat. 1214; Pub. L. 102–145, § 118, as added by Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 93, provided in part that:

''(a) REFINANCING.—Notwithstanding any other provision of law, the President is authorized during fiscal years 1988 through 1991 to transfer existing United States guaranties of outstanding Foreign Military Sales (FMS) credit debt, or to issue new guaranties, either of which would be applied to loans, bonds, notes or other obligations made or issued (as the case may be) by private United States financial institutions (the private lender) to finance the prepayment at par of the principal amounts maturing after September 30, 1989 of existing FMS loans bearing interest rates of eight percent or higher, and arrearages thereon. The loans, bonds, notes or other obligations are hereinafter referred to as the 'private loan': *Provided*, That such guaranties which are transferred or are made pursuant to paragraph (a) shall cover no more and no less than ninety percent of the private loan or any portion or derivative thereof plus unpaid accrued interest and arrearages, if any, outstanding at the time of guaranty transfer or extension: *Provided further*, That the total amount of the guaranty of the private loan cannot exceed ninety percent of the outstanding principal, unpaid accrued interest and arrearages, if any, at any time: *Provided further*, That of the total amount of the private loan, the ninety percent guaranteed portion of the private loan cannot be separated from the private loan at any time: *Provided further*, That no sums in addition to the payment of the outstanding principal amounts maturing after September 30, 1989 of the loan (or advance), plus unpaid accrued interest thereon, and arrearages, if any, shall be charged by the private lender or the Federal Financing Bank as a result of such prepayment against the borrower, the guarantor, or the Guaranty Reserve Fund (GRF), except that the private lender may include, in the interest rate charged, a standard fee to cover costs, such fee which will be set at prevailing market rates, and no guaranty fee shall be charged on guarantees transferred or issued pursuant to this provision: *Provided further*, That the terms of guaranties transferred or issued under this paragraph shall be exactly the same as the existing loans or guarantees, except as modified by this paragraph and including but not limited to the final maturity and

principal and interest payment structure of the existing loans which shall not be altered, except that the repayments of the private loan issued debt may be consolidated into two payments per year: *Provided further*, That the private loan or guarantees transferred or issued pursuant to this paragraph shall be fully and freely transferable, except that any guaranty transferred or extended shall cease to be effective if the private loan or any derivative thereof is to be used to provide significant support for any non-registered obligation: *Provided further*, That for purposes of sections 23 and 24 of the Arms Export Control Act (AECA) [22 U.S.C. 2763, 2764], the term 'defense services' shall be deemed to include the refinancing of FMS debt outstanding at the date of the enactment of this Act [Dec. 22, 1987]: *Provided further*, That not later than ninety days after the enactment of this Act, the Secretary of the Treasury (Secretary) shall issue regulations to carry out the purposes of this heading and that in issuing such regulations, the Secretary shall (1) facilitate the prepayment of loans and loan advances hereunder, (2) provide for full processing of each application within thirty days of its submission to the Secretary, and (3) except as provided in section 24(a) of the AECA, impose no restriction that increases the cost to borrowers of obtaining private financing for prepayment hereunder or that inhibits the ability of the borrower to enter into prepayment arrangements hereunder: *Provided further*, That the Secretary of State shall transmit to the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate, a copy of the text of any agreement entered into pursuant to this section not more than thirty days after its entry into force, together with a description of the transaction.

''[(b) Repealed. Pub. L. 102–145, § 118, as added by Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 93.]

''(c) ARREARAGES.—(1) None of the funds provided pursuant to the Arms Export Control Act (relating to Foreign Military Sales credits) [22 U.S.C. 2751 et seq.] or pursuant to chapter 2 of part II of the Foreign Assistance Act (relating to the Military Assistance program) [22 U.S.C. 2311 et seq.] shall be made available to any country for which one or more loans is refinanced pursuant to paragraph (a) of this heading and which is in default for a period in excess of ninety days in payment of principal or interest on (A) any loan made to such country guaranteed by the United States pursuant to paragraph (a) of this heading, and (B) any other loan issued pursuant to the Arms Export Control Act outstanding on the date of enactment of this provision [Dec. 22, 1987].

''(2) In conjunction with any interest rate reduction pursuant to the authority provided in paragraph (b) of this heading, the President shall require the country to commit in writing that within two years of the effective date of the interest rate reduction it will be no more than ninety days in arrears on the repayment of principal and interest on all loans for which the interest rate is thus reduced and will remain no more than ninety days in arrears for the remaining life of all such loans. None of the funds provided pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] or chapter 2 of part II of the Foreign Assistance Act [22 U.S.C. 2311 et seq.] shall be made available to any country during any period in which it fails to comply with such commitment.

''(d) PURPOSES AND REPORTS.—The authorities of paragraphs (a) and (b) of this heading may be utilized by the President in efforts to negotiate base rights and base access agreements, and for other bilateral foreign policy matters: *Provided further*, That the Secretaries of Defense, State, and Treasury shall transmit to the Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committees on Appropriations of the House of Representatives and Senate a joint report detailing the United States financial and foreign policy purposes served by implementation of this authority on a country by country basis not later than March 1, 1989, and a second joint report not later than August 1, 1989.''

[Functions of President under subsec. (c)(2) of provisions of Pub. L. 100–202 set out above, delegated to Secretary of State, to be exercised in consultation with Secretary of Defense, see section 1–201(a)(32) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2763, 2765, 2771, 2774, 2775, 2776, 2777, 2791, 3402 of this title.

§ 2765. Annual estimate and justification for sales program

(a) Report to Congress; contents

Except as provided in subsection (d)[1] of this section, no later than February 1 of each year, the President shall transmit to the appropriate congressional committees, as a part of the annual presentation materials for security assistance programs proposed for the next fiscal year, a report which sets forth—

(1) an arms sales proposal covering all sales and licensed commercial exports under this chapter of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or weapons-related defense equipment for $25,000,000 or more, which are considered eligible for approval during the current calendar year, together with an indication of which sales and licensed commercial exports are deemed most likely actually to result in the issuance of a letter of offer or of an export license during such year;

(2) an estimate of the total amount of sales and licensed commercial exports expected to be made to each foreign nation from the United States;

(3) the United States national security considerations involved in expected sales or licensed commercial exports to each country, an analysis of the relationship between anticipated sales to each country and arms control efforts concerning such country and an analysis of the impact of such anticipated sales on the stability of the region that includes such country;

(4) an estimate with regard to the international volume of arms traffic to and from nations purchasing arms as set forth in paragraphs (1) and (2) of this subsection, together with best estimates of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding fiscal year;

(5)(A) an estimate of the aggregate dollar value and quantity of defense articles and defense services, military education and training, grant military assistance, and credits and guarantees, to be furnished by the United States to each foreign country and international organization in the next fiscal year; and

(B) for each country that is proposed to be furnished credits or guaranties under this chapter in the next fiscal year and that has

[1] See References in Text note below.

been approved for cash flow financing (as defined in subsection (d)[1] of this section) in excess of $100,000,000 as of October 1 of the current fiscal year—

(i) the amount of such approved cash flow financing,

(ii) a description of administrative ceilings and controls applied, and

(iii) a description of the financial resources otherwise available to such country to pay such approved cash flow financing;

(6) an analysis and description of the services performed during the preceding fiscal year by officers and employees of the United States Government carrying out functions on a full-time basis under this chapter for which reimbursement is provided under section 2792(b) of this title or section 2761(a) of this title, including the number of personnel involved in performing such services;

(7) the total amount of funds in the reserve under section 2764(c) of this title at the end of the fiscal year immediately preceding the fiscal year in which a report under this section is made, together with an assessment of the adequacy of such total amount of funds as a reserve for the payment of claims under guarantees issued pursuant to section 2764 of this title in view of the current debt servicing capacity of borrowing countries, as reported to the Congress pursuant to section 634(a)(5) of the Foreign Assistance Act of 1961 [22 U.S.C. 2394(a)(5)];

(8) a list of all countries with respect to which findings made by the President pursuant to section 2753(a)(1) of this title are in effect on the date of such transmission;

(9) the progress made under the program of the Republic of Korea to modernize its armed forces, the role of the United States in mutual security efforts in the Republic of Korea and the military balance between the People's Republic of Korea and the Republic of Korea;

(10) the amount and nature of Soviet military assistance to the armed forces of Cuba during the preceding fiscal year and the military capabilities of those armed forces;

(11) the status of each loan and each contract of guaranty or insurance theretofore made under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], predecessor Acts, or any Act authorizing international security assistance, with respect to which there remains outstanding any unpaid obligation or potential liability; the status of each extension of credit for the procurement of defense articles or defense services, and of each contract of guaranty in connection with any such procurement, theretofore made under this chapter with respect to which there remains outstanding any unpaid obligation or potential liability;

(12)(A) a detailed accounting of all articles, services, credits, guarantees, or any other form of assistance furnished by the United States to each country and international organization, including payments to the United Nations, during the preceding fiscal year for the detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance for the detection and clearance of landmines; and

(B) for each provision of law making funds available or authorizing appropriations for demining activities described in subparagraph (A), an analysis and description of the objectives and activities undertaken during the preceding fiscal year, including the number of personnel involved in performing such activities; and

(13) such other information as the President may deem necessary.

(b) Congressional request for additional information

Not later than thirty days following the receipt of a request made by any of the congressional committees described in subsection (e) of this section for additional information with respect to any information submitted pursuant to subsection (a) of this section, the President shall submit such information to such committee.

(c) Submission of information in unclassified form or classified addendum with unclassified summary

The President shall make every effort to submit all of the information required by subsection (a) or (b) of this section wholly in unclassified form. Whenever the President submits any such information in classified form, he shall submit such classified information in an addendum and shall also submit simultaneously a detailed summary, in unclassified form, of such classified information.

(d)[2] "Cash flow financing" defined

For the purposes of subsection (a)(5)(B) of this section, the term ''cash flow financing'' means the dollar amount of the difference between the total estimated price of a Letter of Offer and Acceptance or other purchase agreement that has been approved for financing under this chapter or under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] and the amount of the financing that has been approved therefor;[3]

(d)[2] Transmission of information to Congress

The information required by subsection (a)(4) of this section shall be transmitted to the Congress no later than April 1 of each year.

(e) "Appropriate congressional committees" defined

As used in this section, the term ''appropriate congressional committees'' means the Committee on Foreign Relations and the Committee on Appropriations of the Senate and the Committee on International Relations and the Committee on Appropriations of the House of Representatives.

(Pub. L. 90–629, ch. 2, § 25, as added Pub. L. 94–329, title II, § 209(a), June 30, 1976, 90 Stat. 739; amended Pub. L. 95–384, § 18, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96–92, §§ 13, 14, Oct. 29, 1979, 93 Stat. 706; Pub. L. 96–533, title I, §§ 104(c), 107(d), Dec. 16, 1980, 94 Stat. 3133, 3137; Pub. L. 97–113,

[2] So in original. Two subsecs. (d) have been enacted.

[3] So in original. The semicolon probably should be a period.

title VII, § 732, Dec. 29, 1981, 95 Stat. 1557; Pub. L. 99–83, title I, §§ 112, 113, Aug. 8, 1985, 99 Stat. 198; Pub. L. 104–164, title I, § 102(d), July 21, 1996, 110 Stat. 1423; Pub. L. 105–118, title V, § 519, Nov. 26, 1997, 111 Stat. 2411.)

REFERENCES IN TEXT

Subsection (d) of this section, referred to in subsec. (a), preceding par. (1), probably means the subsec. (d) added by section 113(2) of Pub. L. 99–83, relating to transmittal of information to Congress.

Subsection (d) of this section, referred to in subsec. (a)(5)(B), probably means the subsec. (d) added by section 112(b) of Pub. L. 99–83, defining cash flow financing.

The Foreign Assistance Act of 1961, referred to in subsec. (a)(11), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–118, § 519(1), substituted ''appropriate congressional committees'' for ''Congress'' in introductory provisions.

Subsec. (b). Pub. L. 105–118, § 519(2), substituted ''any of the congressional committees described in subsection (e) of this section'' for ''the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives''.

Subsec. (e). Pub. L. 105–118, § 519(3), added subsec. (e).

1996—Subsec. (a)(12), (13). Pub. L. 104–164 added par. (12) and redesignated former par. (12) as (13).

1985—Subsec. (a). Pub. L. 99–83, § 113(1), substituted ''Except as provided in subsection (d) of this section, no'' for ''No''.

Subsec. (a)(5). Pub. L. 99–83, § 112(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 99–83, § 112(b), added subsec. (d) defining ''cash flow financing''.

Pub. L. 99–83, § 113(2), added subsec. (d) relating to transmittal of information to Congress.

1981—Subsec. (a). Pub. L. 97–113, in provision preceding par. (1), required transmission of the report no later than Feb. 1 of each year and substituted provision for annual presentation materials for programs proposed for next fiscal year for provision for presentation materials for programs proposed for each fiscal year.

Subsec. (a)(1). Pub. L. 97–113 added par. (1) which incorporated provisions of former subsec. (d)(1) of this section. See subsec. (d) amendment note. Former par. (1) covered in par. (3).

Subsec. (a)(2). Pub. L. 97–113 added par. (2). Former par. (2), which required the report to contain an estimate of amount of credits and guaranties expected to be extended to each country under sections 2763 and 2764 of this title, covered in par. (5).

Subsec. (a)(3). Pub. L. 97–113 added par. (3) which incorporated provisions of former par. (1) requiring the report to contain an estimate of amounts of expected sales to each country under sections 2761 and 2762 of this title, including detailed explanations of foreign policy and United States national security considerations in expected sales to each country, and (5) requiring inclusion of an arms control impact statement for each purchasing country, covering (A) an analysis of the relationship between expected sales to each country and arms control efforts relating to that country, and (B) the impact of such expected sales on the stability of the region that included the purchasing country. Former par. (3) redesignated (7).

Subsec. (a)(4). Pub. L. 97–113 added par. (4) which incorporated provisions of former subsec. (e), which had required executive estimates of international arms traffic, including estimates on an annual basis of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding three years. Former par. (4) covered in par. (8).

Subsec. (a)(5). Pub. L. 97–113 added par. (5) which incorporated provisions of former par. (2) requiring the report to contain an estimate of amount of credits and guaranties expected to be extended to each country under sections 2763 and 2764 of this title. Former par. (5) covered in par. (3).

Subsec. (a)(6). Pub. L. 97–113 added par. (6).

Subsec. (a)(7). Pub. L. 97–113 redesignated former par. (3) as (7).

Subsec. (a)(8). Pub. L. 97–113 added par. (8), which incorporated provisions of former par. (4), requiring the report to contain a list of all findings in effect on date of its transmission made by the President pursuant to section 2753(a)(1) of this title, together with a full and complete justification for each finding, explaining how sales to each country with respect to which findings were made would strengthen the security of the United States and promote world peace.

Subsecs. (a)(9) to (12). Pub. L. 97–113 added pars. (9) to (12).

Subsec. (b). Pub. L. 97–113 substituted ''Committee on Foreign Affairs'' for ''Committee on International Relations'', and ''with respect to any information'' for ''with respect to any estimate''.

Subsec. (c). Pub. L. 97–113 substituted ''Whenever the President'' for ''In the event the President''.

Subsec. (d). Pub. L. 97–113 incorporated in subsec. (a) introductory text and subsec. (a)(1), provisions of former subsec. (d)(1) which had required transmission to the Speaker of the House and the chairman of the Senate Foreign Relations Committee the Arms Sales Proposal covering sales and licensed commercials exports under this chapter (other than such transactions to members of North Atlantic Treaty Organization, Japan, Australia, and New Zealand) of major weapons or weapons-related defense equipment for $7,000,000 or more, or of any other weapons or similar equipment for $25,000,000 or more, which were eligible for approval during fiscal year beginning October 1 of such year and had required identification in the reports of sales and licensed commercial exports deemed most likely actually to result in issuance of a letter of offer or of an export license during such fiscal year, and subsec. (d)(2) which had required Presidential six month written notifications of Congress of any change in the Arms Sales Proposal for such fiscal year, together with reasons therefor.

Subsec. (e). Pub. L. 97–113 incorporated, in subsec. (a) introductory text and subsec. (a)(4), provisions of former subsec. (e) which had required transmission to Congress on or before Nov. 15 of each year executive estimates of international arms traffic, including estimates on an annual basis of the sale and delivery of weapons and weapons-related defense equipment by all major arms suppliers to all major recipient countries during the preceding three years.

1980—Subsec. (a)(3) to (5). Pub. L. 96–533, § 104(c), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(1). Pub. L. 96–533, § 107(d), included coverage of licensed commercial exports and substituted ''letter of offer or of an export license'' for ''letter of offer''.

1979—Subsec. (d). Pub. L. 96–92, § 13(1)–(4), designated existing provision as par. (1), substituted ''major weapons or weapons-related defense equipment'' for ''major defense equipment'' and ''weapons or weapons-related defense equipment'' for ''defense articles or defense services'', required identification of sales likely to result in issuance of a letter of offer in the furnished reports, and added par. (2).

Subsec. (e). Pub. L. 96–92, § 14, added subsec. (e).

1978—Subsec. (c). Pub. L. 95–384, § 18(b), substituted ''subsection (a) or (b) of this section'' for ''this section''.

Subsec. (d). Pub. L. 95–384, § 18(a), added subsec. (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with Secretary of Defense and Director of Arms Control and Disarmament Agency required to assist in preparation of materials for presentation to Congress, by section 1(g) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2763 of this title.

§ 2766. Security assistance surveys

(a) Statement of findings and policy

The Congress finds that security assistance surveys prepared by the United States for foreign countries have had a significant impact on subsequent military procurement decisions of those countries. It is the policy of the United States that the results of security assistance surveys conducted by the United States clearly do not represent a commitment by the United States to provide any military equipment to any foreign country. Further, recommendations in such surveys should be consistent with the arms export control policy provided for in this chapter.

(b) Reporting requirements

As part of the quarterly report required by section 2776(a) of this title, the President shall include a list of all security assistance surveys authorized during the preceding calendar quarter, specifying the country with respect to which the survey was or will be conducted, the purpose of the survey, and the number of United States Government personnel who participated or will participate in the survey.

(c) Submission of surveys to Congress

Upon a request of the chairman of the Committee on Foreign Affairs of the House of Representatives or the chairman of the Committee on Foreign Relations of the Senate, the President shall submit to that committee copies of security assistance surveys conducted by United States Government personnel.

(d) "Security assistance surveys" defined

As used in this section, the term ''security assistance surveys'' means any survey or study conducted in a foreign country by United States Government personnel for the purpose of assessing the needs of that country for security assistance, and includes defense requirement surveys, site surveys, general surveys or studies, and engineering assessment surveys.

(Pub. L. 90–629, ch. 2, § 26, as added Pub. L. 95–384, § 19, Sept. 26, 1978, 92 Stat. 740; amended Pub. L. 99–83, title I, § 114, Aug. 8, 1985, 99 Stat. 198; Pub. L. 103–437, § 9(a)(7), Nov. 2, 1994, 108 Stat. 4588.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations''.

1985—Pub. L. 99–83, § 114(a)(1), substituted ''Security assistance'' for ''Defense requirement'' in section catchline.

Subsecs. (a), (b). Pub. L. 99–83, § 114(a)(2), substituted ''security assistance'' for ''defense requirement'' wherever appearing.

Subsec. (c). Pub. L. 99–83, § 114(a)(2), (b), substituted ''submit to that committee copies of security assistance surveys'' for ''grant that committee access to defense requirement surveys''.

Subsec. (d). Pub. L. 99–83, § 114(a)(3), added subsec. (d).

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

§ 2767. Authority of President to enter into cooperative projects with friendly foreign countries

(a) Authority of President

The President may enter into a cooperative project agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization.

(b) Definitions

As used in this section—

(1) the term ''cooperative project'', in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in another member country of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another member country or for procurement by the United States of munitions from the North Atlantic Treaty Organization or a subsidiary of such organization;

(2) the term ''cooperative project'', in the case of an agreement entered into under subsection (j) of this section, means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to enhance the ongoing multinational effort of the participants to improve the conventional defense capabilities of the participants and which provides—

(A) for one or more of the other participants to share with the United States the costs of research on and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(B) for concurrent production in the United States and in the country of another

participant of a defense article jointly developed in accordance with subparagraph (A); or

(C) for procurement by the United States of a defense article or defense service from another participant to the agreement; and

(3) the term ''other participant'' means a participant in a cooperative project other than the United States.

(c) Agreements for equitable share of costs; limiting nature of agreements

Each agreement for a cooperative project shall provide that the United States and each of the other participants will contribute to the cooperative project its equitable share of the full cost of such cooperative project and will receive an equitable share of the results of such cooperative project. The full costs of such cooperative project shall include overhead costs, administrative costs, and costs of claims. The United States and the other participants may contribute their equitable shares of the full cost of such cooperative project in funds or in defense articles or defense services needed for such cooperative project. Military assistance and financing received from the United States Government may not be used by any other participant to provide its share of the cost of such cooperative project. Such agreements shall provide that no requirement shall be imposed by a participant for worksharing or other industrial or commercial compensation in connection with such agreement that is not in accordance with such agreement.

(d) Contractual or other obligation; preconditions

The President may enter into contracts or incur other obligations for a cooperative project on behalf of the other participants, without charge to any appropriation or contract authorization, if each of the other participants in the cooperative project agrees (1) to pay its equitable share of the contract or other obligation, and (2) to make such funds available in such amounts and at such times as may be required by the contract or other obligation and to pay any damages and costs that may accrue from the performance of or cancellation of the contract or other obligation in advance of the time such payments, damages, or costs are due.

(e) Waiver of charges; administrative surcharges

(1) For those cooperative projects entered into on or after the effective date[1] of the International Security and Development Cooperation Act of 1985, the President may reduce or waive the charge or charges which would otherwise be considered appropriate under section 2761(e) of this title in connection with sales under sections 2761 and 2762 of this title when such sales are made as part of such cooperative project, if the other participants agree to reduce or waive corresponding charges.

(2) Notwithstanding provisions of section 2761(e)(1)(A) and section 2792(b) of this title, administrative surcharges shall not be increased on other sales made under this chapter in order to compensate for reductions or waivers of such surcharges under this section. Funds received pursuant to such other sales shall not be available to reimburse the costs incurred by the United States Government for which reduction or waiver is approved by the President under this section.

(f) Transmission of numbered certification to Congress respecting proposed agreement; contents

Not less than 30 days before a cooperative project agreement is signed on behalf of the United States, the President shall transmit to the Speaker of the House of Representatives, the chairman of the Committee on Foreign Relations of the Senate, and the chairman of the Committee on Armed Services of the Senate, a numbered certification with respect to such proposed agreement, setting forth—

(1) a detailed description of the cooperative project with respect to which the certification is made;

(2) an estimate of the quantity of the defense articles expected to be produced in furtherance of such cooperative project;

(3) an estimate of the full cost of the cooperative project, with an estimate of the part of the full cost to be incurred by the United States Government, including an estimate of the costs as a result of waivers of section[2] 2761(e)(1)(A) and 2792(b) of this title, for its participation in such cooperative project and an estimate of that part of the full costs to be incurred by the other participants;

(4) an estimate of the dollar value of the funds to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(5) a description of the defense articles and defense services expected to be contributed by the United States and each of the other participants on behalf of such cooperative project;

(6) a statement of the foreign policy and national security benefits anticipated to be derived from such cooperative project; and

(7) to the extent known, whether it is likely that prime contracts will be awarded to particular prime contractors or that subcontracts will be awarded to particular subcontractors to comply with the proposed agreement.

(g) Reporting and certification requirements applicable

In the case of a cooperative project with a North Atlantic Treaty Organization country, section,[3] 2776(b) of this title shall not apply to sales made under section 2761 or 2762 of this title and to production and exports made pursuant to cooperative projects under this section, and section 2776(c) of this title shall not apply to the issuance of licenses or other approvals under section 2778 of this title, if such sales are made, such production and exports ensue, or such licenses or approvals are issued, as part of a cooperative project.

[1] See References in Text note below.

[2] So in original. Probably should be ''sections''.

[3] So in original. The comma probably should not appear.

(h) Statutory provisions applicable to sales

The authority under this section is in addition to the authority under sections 2761 and 2762 of this title and under any other provision of law.

(i) Agreements entered into before October 1, 1985

(1) With the approval of the Secretary of State and the Secretary of Defense, a cooperative agreement which was entered into by the United States before the effective date[4] of the amendment to this section made by the International Security and Development Cooperation Act of 1985 and which meets the requirements of this section as so amended may be treated on and after such date as having been made under this section as so amended.

(2) Notwithstanding the amendment made[5] to this section made by the International Security and Development Cooperation Act of 1985, projects entered into under the authority of this section before the effective date[4] of that amendment may be carried through to conclusion in accordance with the terms of this section as in effect immediately before the effective date[4] of that amendment.

(j) Cooperative project agreements with friendly foreign countries not members of NATO; reporting requirements

(1) The President may enter into a cooperative project agreement with any friendly foreign country not a member of the North Atlantic Treaty Organization under the same general terms and conditions as the President is authorized to enter into such an agreement with one or more member countries of the North Atlantic Treaty Organization if the President determines that the cooperative project agreement with such country would be in the foreign policy or national security interests of the United States.

(2) Not later than January 1 of each year, the President shall submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives a report specifying (A) the countries eligible for participation in such a cooperative project agreement under this subsection, and (B) the criteria used to determine the eligibility of such countries.

(Pub. L. 90–629, ch. 2, § 27, as added Pub. L. 96–92, § 15, Oct. 29, 1979, 93 Stat. 706; amended Pub. L. 99–83, title I, § 115(a), Aug. 8, 1985, 99 Stat. 199; Pub. L. 99–145, title XI, § 1102(a)(1), (5), Nov. 8, 1985, 99 Stat. 708, 710; Pub. L. 99–661, div. A, title XI, § 1103(a), title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3962, 3991; Pub. L. 100–180, div. A, title X, § 1022, Dec. 4, 1987, 101 Stat. 1144; Pub. L. 102–484, div. A, title VIII, § 843(a), Oct. 23, 1992, 106 Stat. 2468.)

REFERENCES IN TEXT

The effective date of the International Security and Development Cooperation Act of 1985 and the effective date of the amendment to this section made by the International Security and Development Cooperation Act of 1985, referred to in subsecs. (e)(1) and (i), respectively, is October 1, 1985, see section 1301 of Pub. L. 99–83, set out as an Effective Date of 1985 Amendment note under section 2151–1 of this title.

The amendment made to this section made by the International Security and Development Cooperation Act of 1985, referred to in subsec. (i), means the general amendment of this section by section 115(a) of Pub. L. 99–83. See 1985 Amendment note below.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 substituted ''costs, administrative costs, and costs of claims'' for ''and administrative costs''.

1987—Subsec. (b)(1)(C). Pub. L. 100–180 inserted ''or for procurement by the United States of munitions from the North Atlantic Treaty Organization or a subsidiary of such organization'' after ''member country''.

1986—Pub. L. 99–661, § 1342(e), repealed section 1102(a)(1) of Pub. L. 99–145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

Pub. L. 99–661, § 1103(a)(2), substituted ''Authority of President to enter into cooperative projects with friendly foreign countries'' for ''North Atlantic Treaty Organization cooperative projects'' in section catchline.

Subsec. (b)(1). Pub. L. 99–661, § 1103(a)(1)(A)(i), inserted '', in the case of an agreement with the North Atlantic Treaty Organization or with one or more member countries of that Organization,'' in introductory provisions.

Subsec. (b)(2), (3). Pub. L. 99–661, § 1103(a)(1)(A)(ii)–(iv), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(3). Pub. L. 99–661, § 1103(a)(1)(B), inserted '', including an estimate of the costs as a result of waivers of section 2761(e)(1)(A) and 2792(b) of this title,''.

Subsec. (g). Pub. L. 99–661, § 1103(a)(1)(C), substituted ''In the case of a cooperative project with a North Atlantic Treaty Organization country, section,'' for ''Section''.

Subsec. (j). Pub. L. 99–661, § 1103(a)(1)(D), added subsec. (j).

1985—Pub. L. 99–83 amended section generally, substituting in subsec. (a) provisions relating to authority of the President, for provisions defining ''cooperative project'', substituting in subsec. (b) provisions defining ''cooperative project'' and ''other participant'', for provisions relating to reduction or waiver of charges, sales not subject to compensatory increases in administrative surcharges, and contribution requirements, substituting in subsec. (c) provisions relating to agreements for equitable share of costs and limiting the nature of such agreements, for provisions relating to transmission of numbered certification of proposed agreement, contents of such certification, and statutory provisions applicable to sales, and adding subsecs. (d) to (i).

Pub. L. 99–145, § 1102(a)(1), which enacted a general amendment of this section similar to that provided in Pub. L. 99–83 was repealed. See 1986 Amendments note above and former section 1105(a)(5) of Pub. L. 99–145 set out as a Repeals; Effective Date note under section 2752 of this title.

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives and Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

[4] See References in Text note below.

[5] So in original. The word ''made'' probably should not appear.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, with Secretary of Defense required to consult with Secretary of State in implementing delegated functions, by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2753, 2791 of this title; title 10 sections 2350b, 4542.

§ 2767a. Repealed. Pub. L. 101–189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535

Section, Pub. L. 99–661, div. A, title XI, § 1105, Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–456, div. A, title X, § 1007, Sept. 29, 1988, 102 Stat. 2040, related to cooperative research and development with major non-NATO allies. See section 2350a of Title 10, Armed Forces.

§ 2768. Repealed. Pub. L. 104–106, div. A, title X, § 1064(a), Feb. 10, 1996, 110 Stat. 445

Section, Pub. L. 90–629, ch. 2, § 28, as added Pub. L. 96–92, § 16(a), Oct. 29, 1979, 93 Stat. 708; amended Pub. L. 97–113, title I, § 101(b), Dec. 29, 1981, 95 Stat. 1520; Pub. L. 100–461, title V, § 588(a), Oct. 1, 1988, 102 Stat. 2268–51, related to reports on price and availability estimates.

SUBCHAPTER II–A—FOREIGN MILITARY CONSTRUCTION SALES

§ 2769. Foreign military construction sales

The President may sell design and construction services to any eligible foreign country or international organization if such country or international organization agrees to pay in United States dollars not less than the full cost to the United States Government of furnishing such services. Payment shall be made to the United States Government in advance of the performance of such services by officers or employees of the United States Government. The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of design and construction services for sale under this section if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such time as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due.

(Pub. L. 90–629, ch. 2A, § 29, as added Pub. L. 96–533, title I, § 105(a), Dec. 16, 1980, 94 Stat. 3133.)

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2762, 2776, 2777, 2779, 2791, 2794 of this title.

SUBCHAPTER II–B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2761 of this title.

§ 2770. General authority

(a) Sale of defense articles and services by President to United States companies; restriction on performance of services; reimbursement credited to selling agency

Subject to the conditions specified in subsection (b) of this section, the President may, on a negotiated contract basis, under cash terms (1) sell defense articles at not less than their estimated replacement cost (or actual cost in the case of services), or (2) procure or manufacture and sell defense articles at not less than their contract or manufacturing cost to the United States Government, to any United States company for incorporation into end items (and for concurrent or follow-on support) to be sold by such a company either (i) on a direct commercial basis to a friendly foreign country or international organization pursuant to an export license or approval under section 2778 of this title or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 2778 of this title. The President may also sell defense services in support of such sales of defense articles, subject to the requirements of this chapter: *Provided, however*, That such services may be performed only in the United States. The amount of reimbursement received from such sales shall be credited to the current applicable appropriation, fund, or account of the selling agency of the United States Government.

(b) Conditions of sale

Defense articles and defense services may be sold, procured and sold, or manufactured and sold, pursuant to subsection (a) of this section only if (1) the end item to which the articles apply is to be procured for the armed forces of a friendly country or international organization, (2) the articles would be supplied to the prime contractor as government-furnished equipment or materials if the end item were being procured for the use of the United States Armed Forces, and (3) the articles and services are available only from United States Government sources or are not available to the prime contractor directly from United States commercial sources at such times as may be required to meet the prime contractor's delivery schedule.

(c) "Defense articles" and "defense services" defined

For the purpose of this section, the terms ''defense articles'' and ''defense services'' mean defense articles and defense services as defined in section 2794(3) and (4) of this title.

(Pub. L. 90–629, ch. 2B, § 30, as added Pub. L. 97–392, § 1, Dec. 29, 1982, 96 Stat. 1962; amended Pub. L. 101–165, title IX, § 9097, Nov. 21, 1989, 103 Stat. 1150.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–165 inserted ''either (i)'' after ''such a company'' in first sentence and inserted before period at end of first sentence ''or (ii) in the case of ammunition parts subject to subsection (b) of this section, using commercial practices which restrict actual delivery directly to a friendly foreign country or international organization pursuant to approval under section 2778 of this title''.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2791 of this title.

SUBCHAPTER II–C—EXCHANGE OF TRAINING AND RELATED SUPPORT

§ 2770a. Exchange of training and related support

(a) Authorization; eligibility; scope

Subject to subsection (b) of this section, the President may provide training and related support to military and civilian defense personnel of a friendly foreign country or an international organization. Such training and related support shall be provided by a Secretary of a military department and may include the provision of transportation, food services, health services, and logistics and the use of facilities and equipment.

(b) Reciprocal arrangements; reimbursement

Training and related support may be provided under this section only pursuant to an agreement or other arrangement providing for the provision by the recipient foreign country or international organization, on a reciprocal basis, of comparable training and related support to military and civilian personnel under the jurisdiction of the Secretary of the military department providing the training and related support under this section. Such reciprocal training and related support must be provided within a reasonable period of time (which may not be more than one year) of the provision of training and related support by the United States. To the extent that a foreign country or international organization to which training and related support is provided under this section does not provide such comparable training and related support to the United States within a reasonable period of time, that country or international organization shall be required to reimburse the United States for the full costs of the training and related support provided by the United States.

(c) Regulations

Training and related support under this section shall be provided under regulations prescribed by the President.

(d) Report to Congress

Not later than February 1 of each year, the President shall submit to the Congress a report on the activities conducted pursuant to this section during the preceding fiscal year, including the estimated full costs of the training and related support provided by the United States to each country and international organization and the estimated value of the training and related support provided to the United States by that country or international organization.

(Pub. L. 90–629, ch. 2C, § 30A, as added Pub. L. 99–83, title I, § 116, Aug. 8, 1985, 99 Stat. 201.)

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as an Effective Date of 1985 Amendment note under section 2151–1 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER III—MILITARY EXPORT CONTROLS

§ 2771. Military sales authorizations and ceilings

(a) Authorization for foreign military sales credit and guarantee program

There are authorized to be appropriated to the President to carry out this chapter $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for fiscal year 1987. Credits may not be extended under section 2763 of this title in an amount, and loans may not be guaranteed under section 2764(a) of this title in a principal amount, which exceeds any maximum amount which may be established with respect to such credits or such loan guarantees in legislation appropriating funds to carry out this chapter. Unobligated balances of funds made available pursuant to this section are hereby authorized to be continued available by appropriations legislation to carry out this chapter.

(b) Aggregate ceilings on credit sales; availability at concessional rates of interest

(1) The total amount of credits extended under section 2763 of this title shall not exceed $5,371,000,000 for fiscal year 1986 and $5,371,000,000 for fiscal year 1987.

(2) Of the aggregate amount of financing provided under this section, not more than $553,900,000 for fiscal year 1986 and not more than $553,900,000 for fiscal year 1987 may be made available at concessional rates of interest. If a country is released from its contractual liability to repay the United States Government with respect to financing provided under this section, such financing shall not be considered to be financing provided at concessional rates of interest for purposes of the limitation established by this paragraph.

(c) Interest rates

Loans available under section 2763 of this title shall be provided at rates of interest that are not less than the current average market yield on outstanding marketable obligations of the United States of comparable maturities.

(Pub. L. 90–629, ch. 3, § 31, Oct. 22, 1968, 82 Stat. 1324; Pub. L. 91–672, § 2, Jan. 12, 1971, 84 Stat. 2053; Pub. L. 92–226, pt. IV, § 401(a), (b), Feb. 7, 1972, 86 Stat. 32; Pub. L. 93–189, § 25(5), (6), Dec. 17, 1973, 87 Stat. 730; Pub. L. 93–559, § 45(a)(6), (7), Dec. 30,

1974, 88 Stat. 1815; Pub. L. 94–329, title II, § 210(a)–(c)(1), June 30, 1976, 90 Stat. 740; Pub. L. 95–92, § 19, Aug. 4, 1977, 91 Stat. 623; Pub. L. 95–384, § 20, Sept. 26, 1978, 92 Stat. 741; Pub. L. 96–92, § 17(a), Oct. 29, 1979, 93 Stat. 708; Pub. L. 96–533, title I, §§ 104(d), 105(b)(3), 106(a)–(c), Dec. 16, 1980, 94 Stat. 3133–3136; Pub. L. 97–113, title I, § 105, Dec. 29, 1981, 95 Stat. 1521; Pub. L. 98–151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 969, 970; Pub. L. 99–83, title I, § 101(a), (b), Aug. 8, 1985, 99 Stat. 193; Pub. L. 101–513, title V, § 596(c), Nov. 5, 1990, 104 Stat. 2062; Pub. L. 104–164, title I, §§ 101, 104(b)(2)(C), July 21, 1996, 110 Stat. 1422, 1427.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–164, § 101, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For fiscal year 1986 and fiscal year 1987, the principal amount of credits provided under section 2763 of this title at market rates of interest with respect to Greece, the Republic of Korea, the Philippines, Portugal, Spain, Thailand, and Turkey shall (if and to the extent each country so desires) be repaid in not more than twenty years, following a grace period of ten years on repayment of principal.''

Subsec. (d). Pub. L. 104–164, § 104(b)(2)(C), struck out subsec. (d) which read as follows: ''The aggregate acquisition cost to the United States of excess defense articles ordered by the President in any fiscal year after fiscal year 1976 for delivery to foreign countries or international organizations under the authority of chapter 2 of part II of the Foreign Assistance Act of 1961 or pursuant to sales under this chapter may not exceed $250,000,000 (exclusive of ships and their onboard stores and supplies transferred in accordance with law, and of any defense articles with respect to which the President submits a certification under section 2776(b) of this title.).''

1990—Subsec. (d). Pub. L. 101–513 inserted '', and of any defense articles with respect to which the President submits a certification under section 2776(b) of this title.'' after ''law''.

1985—Subsec. (a). Pub. L. 99–83, § 101(a), substituted provisions authorizing appropriations of $5,371,000,000 for fiscal years 1986 and 1987, for provisions authorizing appropriations of $800,000,000 for fiscal years 1982 and 1983.

Subsec. (b). Pub. L. 99–83, § 101(b), amended subsec. (b) generally, substituting provisions relating to maximum amount of credits authorized for fiscal years 1986 and 1987 and maximum amounts of such credits available at concessional rates of interest for such years, for provisions relating to maximum amounts of credits (or participations in credits) and loans guaranteed for fiscal years 1982 and 1983, and credit, etc., programs with respect to specific countries.

Subsec. (c). Pub. L. 99–83, § 101(b), amended subsec. (c) generally, substituting provisions relating to extended repayment terms for credits provided for fiscal years 1986 and 1987, for provisions relating to funds made available for fiscal year 1984 to finance procurement of defense articles, etc., by Israel.

1983—Subsec. (b)(3). Pub. L. 98–151 amended par. (3) generally, substituting provisions authorizing not less than $1,700,000,000 for fiscal year 1984 as available to Israel, of which not less than $850,000,000 shall be available as credits under section 2763 of this title, and provisions relating to availability of funds part of the total aggregate credit ceiling made available to Israel, for provisions authorizing not less than $1,400,000,000 for the fiscal years 1982 and 1983 as available to Israel, of which not less than $550,000,000 for each year shall be available as credits.

Subsec. (b)(5). Pub. L. 98–151 substituted ''1984'' for ''1982 and for the fiscal year 1983''.

Subsec. (b)(6). Pub. L. 98–151 amended par. (6) generally, inserting provisions relating to availability to Egypt for fiscal year 1984 of not less than $900,000,000 of the total principal amount of loans guaranteed, and substituting provisions authorizing not less than $465,000,000 for fiscal year 1984, for provisions authorizing not less than $200,000,000 for fiscal years 1982 and 1983.

Subsec. (c). Pub. L. 98–151 substituted provisions relating to applicability to fiscal year 1984, for provisions relating to applicability to fiscal years 1982 and 1983, and substituted ''$850,000,000'' for ''$550,000,000''.

1981—Subsec. (a). Pub. L. 97–113, § 105(a), substituted ''$800,000,000 for the fiscal year 1982 and $800,000,000 for the fiscal year 1983'' for ''$500,000,000 for the fiscal year 1981''.

Subsec. (b). Pub. L. 97–113, § 105(b), prescribed in par. (1) $800,000,000 limit on credits for fiscal years 1982 and 1983, striking out $500,000,000 limit for fiscal year 1981, in par. (2) $3,269,525,000 limit on total principal amount of guaranteed loans for fiscal years 1982 and 1983, striking out $2,616,000,000 limit for fiscal year 1981, and in par. (3) $1,400,000,000 minimum for Israel in fiscal years 1982 and 1983, the same sum made available for fiscal year 1981, including requirement of $550,000,000 minimum of such funds for such fiscal years as credits under section 2763 of this title, striking out requirement for Israeli use of $200,000,000 of available funds only for relocation costs from the Sinai, and added pars. (4) to (7).

Subsec. (c). Pub. L. 97–113, § 105(c)(1)–(3), substituted ''fiscal year 1982 and for the fiscal year 1983'' for ''fiscal year 1981'', ''$550,000,000'' for ''$500,000,000'', and ''each such year'' for ''such year''.

1980—Subsec. (a). Pub. L. 96–533, §§ 104(d), 106(a), placed a limit on extension of credits and loan guaranties not to exceed amount established in appropriation of funds to carry out this chapter and substituted ''$500,000,000 for the fiscal year 1981'' for ''$673,500,000 for the fiscal year 1980''.

Subsec. (b). Pub. L. 96–533, § 106(b), in revising subsec. (b), substituted par. (1) and (2) limits on amount of credits or participations in credits and loan guaranties for fiscal year 1981 in amounts of $500,000,000 and $2,616,000,000 for prior combined sum limited to $2,235,000,000 for fiscal year 1980 and substituted par. (3) earmarking minimum of $1,400,000,000 only for Israel for fiscal year 1981, including availability of $200,000,000 for costs associated with relocation of Israeli forces from the Sinai for prior prescription of minimum sum of $1,000,000,000 as available only for Israel.

Subsec. (c). Pub. L. 96–533, §§ 105(b)(3), 106(c), substituted ''defense articles, defense services, and design and construction services'' for ''defense articles and defense services'' in two places, ''1981'' for ''1980'' in two places, and ''$500,000,000'' for ''one-half''.

1979—Subsec. (a). Pub. L. 96–92, § 17(a)(1), substituted ''$673,500,000 for the fiscal year 1980'' for ''$682,000,000 for the fiscal year 1978 and $674,300,000 for the fiscal year 1979''.

Subsec. (b). Pub. L. 96–92, § 17(a)(2), substituted ''$2,235,000,000 for the fiscal year 1980, of which'' for ''$2,152,350,000 for the fiscal year 1978 and $2,085,500,000 for the fiscal year 1979, of which amount for each such year''.

Subsec. (c). Pub. L. 96–92, § 17(a)(3), substituted ''fiscal year 1980'' for ''fiscal year 1979''.

Subsec. (d). Pub. L. 96–92, § 17(a)(4), substituted ''$250,000,000'' for ''$150,000,000''.

1978—Subsec. (a). Pub. L. 95–384, § 20(a), substituted ''$682,000,000 for the fiscal year 1978 and $674,300,000 for the fiscal year 1979'' for ''$677,000,000 for the fiscal year 1978''.

Subsec. (b). Pub. L. 95–384, § 20(b), substituted ''$2,152,350,000 for the fiscal year 1978 and $2,085,500,000 for the fiscal year 1979, of which amount for each such year'' for ''$2,102,350,000 for the fiscal year 1978, of which''.

Subsec. (c). Pub. L. 95–384, § 20(c), substituted ''fiscal year 1979'' for ''fiscal year 1978''.

Subsec. (d). Pub. L. 95–384, § 20(d), substituted ''$150,000,000'' for ''$100,000,000''.

1977—Subsec. (a). Pub. L. 95–92, § 19(1), substituted ''$677,000,000 for the fiscal year 1978'' for ''$1,039,000,000

for the fiscal year 1976 and not to exceed $740,000,000 for the fiscal year 1977''.

Subsec. (b). Pub. L. 95–92, § 19(2), substituted ''$2,102,350,000 for the fiscal year 1978'' for ''$2,374,700,000 for the fiscal year 1976, of which not less than $1,500,000,000 shall be available only for Israel, and shall not exceed $2,022,100,000 for the fiscal year 1977''.

Subsec. (c). Pub. L. 95–92, § 19(3), substituted ''year 1978'' for ''years 1976 and 1977'' and struck out ''each'' before ''such year''.

1976—Subsec. (a). Pub. L. 94–329, § 210(a), substituted provisions authorizing appropriations not to exceed $1,039,000,000 for the fiscal year 1976 and not to exceed $740,000,000 for the fiscal year 1977, for provisions authorizing appropriations not to exceed $405,000,000 for the fiscal year 1975.

Subsec. (b). Pub. L. 94–329, § 210(b), substituted provisions setting out the foreign military sales credit ceiling of $2,374,700,000 for the fiscal year 1976, of which not less than $1,500,000,000 shall be available only for Israel, and $2,022,100,000 for the fiscal year 1977, of which not less than $1,000,000,000 shall be available only for Israel, for provisions setting out such ceiling of $872,500,000 for the fiscal year 1975, of which amount not less than $300,000,000 shall be available to Israel only, and struck out provisions relating to obligation of $100,000,000 for financing procurement of defense articles and services by Israel and for release of Israel from contractual liability to repay United States Government for the defense article and services so financed.

Subsecs. (c), (d). Pub. L. 94–329, § 210(c)(1), added subsecs. (c) and (d).

1974—Subsec. (a). Pub. L. 93–559, § 45(a)(6), substituted ''$405,000,000 for the fiscal year 1975'' for ''$325,000,000 for the fiscal year 1974''.

Subsec. (b). Pub. L. 93–559, § 45(a)(7), substituted ''$872,500,000 for the fiscal year 1975'' for ''$730,000,000 for the fiscal year 1974'' and provided for obligation of $100,000,000 for financing procurement of defense articles and defense services by Israel and for release of Israel from contractual liability to repay the United States Government for the defense articles and defense services so financed.

1973—Subsec. (a). Pub. L. 93–189, § 25(5), substituted provision authorizing appropriation of not more than $325,000,000 for the fiscal year 1974, for provision authorizing appropriation of not more than $400,000,000 for the fiscal year 1972.

Subsec. (b). Pub. L. 93–189, § 25(6), substituted provisions setting out the foreign military sales credit ceiling of $730,000,000 for the fiscal year 1974, of which amount not less than $300,000,000 shall be made available to Israel, for provisions setting out such ceiling of $550,000,000 for the fiscal year 1972, of which amount not less than $300,000,000 shall be made available to Israel, and such amount to exclude credits covered by guaranties issued under section 2764(b) of this title.

1972—Subsec. (a). Pub. L. 92–226, § 401(a), substituted provision authorizing appropriation of not more than $400,000,000 for the fiscal year 1972, for provisions authorizing appropriation of not more than $250,000,000 for each of the fiscal years 1970 and 1971.

Subsec. (b). Pub. L. 92–226, § 401(b), substituted provisions setting out the foreign military sales credit ceiling of $550,000,000 for the fiscal year 1972, of which amount not less than $300,000,000 shall be made available to Israel, for provisions setting out such ceiling of $340,000,000 for the fiscal years 1970 and 1971.

1971—Subsec. (a). Pub. L. 91–672, § 2(1), substituted provisions authorizing appropriation of not more than $250,000,000 for each of the fiscal years 1970 and 1971 for provisions authorizing appropriation of not more than $296,000,000 for the fiscal year 1969.

Subsec. (b). Pub. L. 91–672, § 2(2), substituted provisions setting out the foreign military sales credit ceiling of $340,000,000 for the fiscal years 1970 and 1971 for provisions setting out such ceiling of $296,000,000 for the fiscal year 1969.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

CEILINGS ON LOANS FOR GREECE, SUDAN, AND TURKEY, FISCAL YEAR 1980; REPAYMENT PERIOD; GRACE PERIOD FOR REPAYMENT OF PRINCIPAL

Section 17(b) of Pub. L. 96–92 provided that: ''Of the principal amount of loans guaranteed for the fiscal year 1980 under section 24 of the Arms Export Control Act [section 2764 of this title]—

''(1) with respect to Turkey, not to exceed $50,000,000,

''(2) with respect to Greece, not to exceed $42,000,000, and

''(3) with respect to Sudan, not to exceed $25,000,000, shall be repaid in not less than 20 years, following a grace period of 10 years on repayment of principal.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2442, 3402 of this title.

§ 2772. Repealed. Pub. L. 102–429, title I, § 112(e), Oct. 21, 1992, 106 Stat. 2195

Section, Pub. L. 90–629, ch. 3, § 32, Oct. 22, 1968, 82 Stat. 1325, prohibited certain military export financing by Export-Import Bank.

§ 2773. Restraint in arms sales to Sub-Saharan Africa

It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic development and that United States policy should assist in limiting the development of costly military conflict in that region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.

(Pub. L. 90–629, ch. 3, § 33, Oct. 22, 1968, 82 Stat. 1325; Pub. L. 91–672, § 3, Jan. 12, 1971, 84 Stat. 2053; Pub. L. 92–226, pt. IV, § 401(c), (d), Feb. 7, 1972, 86 Stat. 32; Pub. L. 93–189, § 25(7)–(9), Dec. 17, 1973, 87 Stat. 731; Pub. L. 93–559, § 45(a)(8), Dec. 30, 1974, 88 Stat. 1815; Pub. L. 96–92, § 18, Oct. 29, 1979, 93 Stat. 709.)

AMENDMENTS

1979—Pub. L. 96–92 substituted provisions respecting restraint in arms sales to Sub-Saharan Africa for provisions imposing regional ceilings on foreign military sales to African countries and Presidential waiver and report thereof to Congress.

1974—Subsec. (a). Pub. L. 93–559, § 45(a)(8)(A), (B), repealed subsec. (a) which prescribed a ceiling of $150,000,000 in each fiscal year on the total amount of military assistance, credits, participations in credits, guaranteed loans, and loans and sales under section 7307 of Title 10, for Latin American countries, and redesignated subsec. (b) as (a).

Subsec. (b). Pub. L. 93–559, § 45(a)(8)(B), (C), added subsec. (b) and redesignated former subsec. (b) as (a).

1973—Subsec. (a). Pub. L. 93–189, § 25(7), struck out reference to cash sales pursuant to sections 2761 and 2762 of this title reference to exclusion of credits covered by guaranties issued under section 2764(b) of this title, and reference to the face amount of contracts of guaranty issued under section 2764(a) and (b) of this title, inserted reference to the principal amount of loans guaranteed under section 2764(a) of this title, and substituted ''$150,000,000'' for ''$100,000,000''.

Subsec. (b). Pub. L. 93–189, § 25(8), struck out reference to cash sales pursuant to sections 2761 and 2762 of this title, reference to exclusion of credits covered by guaranties issued under section 2764(b) of this title, and reference to the face amount of contracts of guaranty issued under section 2764(a) and (b) of this title, and inserted reference to the principal amount of loans guaranteed under section 2764(a) of this title.

Subsec. (c). Pub. L. 93–189, § 25(9), struck out subsec. (c) which provided for Presidential waiver of limitations on amounts authorized under this section and set forth geographical limitations on the aggregate amounts of military assistance to be made available and percentage deviations from such ceiling amounts.

1972—Subsec. (a). Pub. L. 92–226, § 401(c), substituted ''$100,000,000'' for ''$75,000,000''.

Subsec. (c). Pub. L. 92–226, § 401(d), substituted provisions for waiver of limitations when overriding requirements of the national security of the United States justify waiver for prior provisions for such a waiver when important to the security of the United States, required a written report with reasons for findings and statement in detail of expenditures when in excess of applicable geographical limitations, and prescribed percentage limitation for exceeding aggregate of geographical ceiling limitation.

1971—Subsec. (a). Pub. L. 91–672, § 3(1), made fiscal year 1969 ceiling of $75,000,000 for Latin American countries a continuing ceiling applicable in each fiscal year.

Subsec. (b). Pub. L. 91–672, § 3(2), made fiscal year 1969 ceiling of $40,000,000 for African countries a continuing ceiling applicable in each fiscal year.

§ 2774. Foreign military sales credit standards

The President shall establish standards and criteria for credit and guaranty transactions under sections 2763 and 2764 of this title in accordance with the foreign, national security, and financial policies of the United States.

(Pub. L. 90–629, ch. 3, § 34, Oct. 22, 1968, 82 Stat. 1325.)

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, with prior concurrence of Secretary of Defense and Secretary of the Treasury required to extent standards and criteria for credit and guaranty transactions are based upon national security or financial policies, by section 1(h) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2775. Foreign military sales to less developed countries

(a) When the President finds that any economically less developed country is diverting development assistance furnished pursuant to the Foreign Assistance Act of 1961, as amended [22 U.S.C. 2151 et seq.], or sales under the Agricultural Trade Development and Assistance Act of 1954, as amended [7 U.S.C. 1691 et seq.], to military expenditures, or is diverting its own resources to unnecessary military expenditures, to a degree which materially interferes with its development, such country shall be immediately ineligible for further sales and guarantees under sections 2761, 2762, 2763, and 2764 of this title, until the President is assured that such diversion will no longer take place.

(b) Repealed. Pub. L. 93–559, § 45(a)(5), Dec. 30, 1974, 88 Stat. 1814.

(Pub. L. 90–629, ch. 3, § 35, Oct. 22, 1968, 82 Stat. 1325; Pub. L. 93–559, § 45(a)(5), Dec. 30, 1974, 88 Stat. 1814.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, as amended, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Agricultural Trade Development and Assistance Act of 1954, as amended, referred to in subsec. (a), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended, which is classified principally to chapter 41 (§ 1691 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7, and Tables.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–559 repealed subsec. (b) which provided for Presidential reports to Congress respecting sales and guaranties to less developed countries.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of State by section 1(i) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2776. Reports and certifications to Congress on military exports

(a) Report by President; contents

The President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate not more than sixty days after the end of each quarter an unclassified report (except that any material which was transmitted in classified form under subsection (b)(1) or (c)(1) of this section may be contained in a classified addendum to such report, and any letter of offer referred to in paragraph (1) of this subsection may be listed in such addendum unless such letter of offer has been the subject of an unclassified certification pursuant to subsection (b)(1) of this section, and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum) containing—

(1) a listing of all letters of offer to sell any major defense equipment for $1,000,000 or more under this chapter to each foreign country and international organization, by category, if such letters of offer have not been accepted or canceled;

(2) a listing of all such letters of offer that have been accepted during the fiscal year in which such report is submitted, together with the total value of all defense articles and defense services sold to each foreign country and international organization during such fiscal year;

(3) the cumulative dollar amounts, by foreign country and international organization, of sales credit agreements under section 2763 of this title and guaranty agreements under section 2764 of this title made during the fiscal year in which such report is submitted;

(4) a numbered listing of all licenses and approvals for the export to each foreign country and international organization during such fiscal year of commercially sold major defense equipment, by category, sold for $1,000,000 or more, together with the total value of all de-

fense articles and defense services so licensed for each foreign country and international organization, setting forth with respect to the listed major defense equipment—

(A) the items to be exported under the license,

(B) the quantity and contract price of each such item to be furnished, and

(C) the name and address of the ultimate user of each such item;

(5) projections of the dollar amounts, by foreign country and international organization, of sales expected to be made under sections 2761 and 2762 of this title in the quarter of the fiscal year immediately following the quarter for which such report is submitted;

(6) a projection with respect to all sales expected to be made to each country and organization for the remainder of the fiscal year in which such report is transmitted;

(7) an estimate of—

(A) the number of United States military personnel, the number of United States Government civilian personnel, and the number of United States civilian contract personnel, who were in each foreign country at the end of that quarter, and

(B) the number of members of each such category of personnel who were in each foreign country at any time during that quarter,

in implementation of sales and commercial exports under this chapter or of assistance under chapter 2, 5, 6, or 8 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq., 2347 et seq., 2348 et seq., 2349aa et seq.], including both personnel assigned to the country and personnel temporarily in the country by detail or otherwise;

(8) a description of each payment, contribution, gift, commission, or fee reported to the Secretary of State under section 2779 of this title, including (A) the name of the person who made such payment, contribution, gift, commission, or fee; (B) the name of any sales agent or other person to whom such payment, contribution, gift, commission, or fee was paid; (C) the date and amount of such payment, contribution, gift, commission, or fee; (D) a description of the sale in connection with which such payment, contribution, gift, commission, or fee was paid; and (E) the identification of any business information considered confidential by the person submitting it which is included in the report;

(9) a listing of each sale under section 2769 of this title during the quarter for which such report is made, specifying (A) the purchaser, (B) the United States Government department or agency responsible for implementing the sale, (C) an estimate of the dollar amount of the sale, and (D) a general description of the real property facilities to be constructed pursuant to such sale;

(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 2753(a)(2) of this title, the regulations issued under section 2778 of this title, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)(1)(B)], if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is $1,000,000 or more;

(11) a listing of all munitions items (as defined in section 2780(*l*)(1) of this title) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

(A) the value of the munitions items was $250,000 or more; or

(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was $250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities); and

(12) a report on all concluded government-to-government agreements regarding foreign coproduction of defense articles of United States origin and all other concluded agreements involving coproduction or licensed production outside of the United States of defense articles of United States origin (including coproduction memoranda of understanding or agreement) that have not been previously reported under this subsection, which shall include—

(A) the identity of the foreign countries, international organizations, or foreign firms involved;

(B) a description and the estimated value of the articles authorized to be produced, and an estimate of the quantity of the articles authorized to be produced;

(C) a description of any restrictions on third-party transfers of the foreign-manufactured articles; and

(D) if any such agreement does not provide for United States access to and verification of quantities of articles produced overseas and their disposition in the foreign country, a description of alternative measures and controls incorporated in the coproduction or licensing program to ensure compliance with restrictions in the agreement on production quantities and third-party transfers.

For each letter of offer to sell under paragraphs (1) and (2), the report shall specify (i) the foreign country or international organization to which the defense article or service is offered or was sold, as the case may be; (ii) the dollar amount of the offer to sell or the sale and the number of defense articles offered or sold, as the case may be; (iii) a description of the defense article or service offered or sold, as the case may be; and (iv) the United States Armed Force or other agency of the United States which is making the offer to sell or the sale, as the case may be.

(b) Letter of offer to sell defense articles, services, design and construction services, or major equipment; submission of numbered Presidential certification and additional statement; contents; emergency justification statement; enhancements or upgrades in sensitivity of technology or capability of major defense articles, equipment, or services

(1) In the case of any letter of offer to sell any defense articles or services under this chapter for $50,000,000 or more, any design and construction services for $200,000,000 or more, or any major defense equipment for $14,000,000 or more, before such letter of offer is issued, the President shall submit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a numbered certification with respect to such offer to sell containing the information specified in clauses (i) through (iv) of subsection (a) of this section, or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9) of subsection (a) of this section, and a description, containing the information specified in paragraph (8) of subsection (a) of this section, of any contribution, gift, commission, or fee paid or offered or agreed to be paid in order to solicit, promote, or otherwise to secure such letter of offer. Such numbered certifications shall also contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles, defense services, or design and construction services, proposed to be sold, and a detailed justification of the reasons necessitating the sale of such articles or services in view of the sensitivity of such technology. In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 2797c of this title), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification). In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request—

(A) a detailed description of the defense articles, defense services, or design and construction services to be offered, including a brief description of the capabilities of any defense article to be offered;

(B) an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel expected to be needed in such country to carry out the proposed sale;

(C) the name of each contractor expected to provide the defense article, defense service, or design and construction service proposed to be sold and a description from such contractor of any offset agreements proposed to be entered into in connection with such sale (if known on the date of transmittal of such statement);

(D) an evaluation, prepared by the Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense, of the manner, if any, in which the proposed sale would—

(i) contribute to an arms race;

(ii) support international terrorism;

(iii) increase the possibility of an outbreak or escalation of conflict;

(iv) prejudice the negotiation of any arms controls; or

(v) adversely affect the arms control policy of the United States;

(E) the reasons why the foreign country or international organization to which the sale is proposed to be made needs the defense articles, defense services, or design and construction services which are the subject of such sale and a description of how such country or organization intends to use such defense articles, defense services, or design and construction services;

(F) an analysis by the President of the impact of the proposed sale on the military stocks and the military preparedness of the United States;

(G) the reasons why the proposed sale is in the national interest of the United States;

(H) an analysis by the President of the impact of the proposed sale on the military capabilities of the foreign country or international organization to which such sale would be made;

(I) an analysis by the President of how the proposed sale would affect the relative military strengths of countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered and whether other countries in the region have comparable kinds and amounts of defense articles, defense services, or design and construction services;

(J) an estimate of the levels of trained personnel and maintenance facilities of the foreign country or international organization to which the sale would be made which are needed and available to utilize effectively the defense articles, defense services, or design and construction services proposed to be sold;

(K) an analysis of the extent to which comparable kinds and amounts of defense articles, defense services, or design and construction services are available from other countries;

(L) an analysis of the impact of the proposed sale on United States relations with the countries in the region to which the defense articles, defense services, or design and construction services which are the subject of such sale would be delivered;

(M) a detailed description of any agreement proposed to be entered into by the United States for the purchase or acquisition by the United States of defense articles, defense services, design and construction services, or defense equipment, or other articles, services, or equipment of the foreign country or international organization in connection with, or

as consideration for, such letter of offer, including an analysis of the impact of such proposed agreement upon United States business concerns which might otherwise have provided such articles, services, or equipment to the United States, an estimate of the costs to be incurred by the United States in connection with such agreement compared with costs which would otherwise have been incurred, an estimate of the economic impact and unemployment which would result from entering into such proposed agreement, and an analysis of whether such costs and such domestic economic impact justify entering into such proposed agreement;

(N) the projected delivery dates of the defense articles, defense services, or design and construction services to be offered;

(O) a detailed description of weapons and levels of munitions that may be required as support for the proposed sale; and

(P) an analysis of the relationship of the proposed sale to projected procurements of the same item.

A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (ii) and the details of the description specified in clause (iii) of subsection (a) of this section may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States. The letter of offer shall not be issued, with respect to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, if the Congress, within fifteen calendar days after receiving such certification, or with respect to a proposed sale to any other country or organization, if the Congress within thirty calendar days after receiving such certification, enacts a joint resolution prohibiting the proposed sale, unless the President states in his certification that an emergency exists which requires such sale in the national security interests of the United States. If the President states in his certification that an emergency exists which requires the proposed sale in the national security interest of the United States, thus waiving the congressional review requirements of this subsection, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the letter of offer and a discussion of the national security interests involved.

(2) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, except that for purposes of consideration of any joint resolution with respect to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, it shall be in order in the Senate to move to discharge a committee to which such joint resolution was referred if such committee has not reported such joint resolution at the end of five calendar days after its introduction.

(3) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(4) In addition to the other information required to be contained in a certification submitted to the Congress under this subsection, each such certification shall cite any quarterly report submitted pursuant to section 2768[1] of this title which listed a price and availability estimate, or a request for the issuance of a letter of offer, which was a basis for the proposed sale which is the subject of such certification.

(5)(A) If, before the delivery of any major defense article or major defense equipment, or the furnishing of any defense service or design and construction service, sold pursuant to a letter of offer described in paragraph (1), the sensitivity of technology or the capability of the article, equipment, or service is enhanced or upgraded from the level of sensitivity or capability described in the numbered certification with respect to an offer to sell such article, equipment, or service, then, at least 45 days before the delivery of such article or equipment or the furnishing of such service, the President shall prepare and transmit to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report—

(i) describing the manner in which the technology or capability has been enhanced or upgraded and describing the significance of such enhancement or upgrade; and

(ii) setting forth a detailed justification for such enhancement or upgrade.

(B) The provisions of subparagraph (A) apply to an article or equipment delivered, or a service furnished, within ten years after the transmittal to the Congress of a numbered certification with respect to the sale of such article, equipment, or service.

(C) If the enhancement or upgrade in the sensitivity of technology or the capability of major defense equipment, defense articles, defense services, or design and construction services described in a numbered certification submitted under this subsection costs $14,000,000 or more in the case of any major defense equipment, $50,000,000 or more in the case of defense articles or defense services, or $200,000,000 or more in the case of design or construction services, then the President shall submit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a new numbered certification which relates to such enhancement or upgrade and which shall be considered for purposes of this subsection as if it were a separate letter of offer to sell defense equipment, articles, or services, subject to all of the requirements, restrictions, and conditions set forth in this subsection. For purposes of this subparagraph, references in this subsection to sales shall be deemed to be references to enhancements or upgrades in the sensitivity of technology or the capability of major defense equipment, articles, or services, as the case may be.

[1] See References in Text note below.

(D) For the purposes of subparagraph (A), the term ''major defense article'' shall be construed to include electronic devices, which if upgraded, would enhance the mission capability of a weapons system.

(c) Application for export license; submission of numbered Presidential certification and statement to Congress; contents; emergency circumstances; joint resolution; exception

(1) In the case of an application by a person (other than with regard to a sale under section 2761 or section 2762 of this title) for a license for the export of any major defense equipment sold under a contract in the amount of $14,000,000 or more or of defense articles or defense services sold under a contract in the amount of $50,000,000 or more, before issuing such license the President shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate an unclassified numbered certification with respect to such application specifying (A) the foreign country or international organization to which such export will be made, (B) the dollar amount of the items to be exported, and (C) a description of the items to be exported. Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export (if known on the date of transmittal of such certification). In addition, the President shall, upon the request of such committee or the Committee on Foreign Affairs of the House of Representatives, transmit promptly to both such committees a statement setting forth, to the extent specified in such request, a description of the capabilities of the items to be exported, an estimate of the total number of United States personnel expected to be needed in the foreign country concerned in connection with the items to be exported and an analysis of the arms control impact pertinent to such application, prepared in consultation with the Secretary of Defense and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement). In a case in which such articles or services are listed on the Missile Technology Control Regime Annex and are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 2797c of this title), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. A certification transmitted pursuant to this subsection shall be unclassified, except that the information specified in clause (B) and the details of the description specified in clause (C) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States.

(2) Unless the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, a license for export described in paragraph (1)—

(A) in the case of a license for an export to the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand, shall not be issued until at least 15 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 15-day period, enacts a joint resolution prohibiting the proposed export; and

(B) in the case of any other license, shall not be issued until at least 30 calendar days after the Congress receives such certification, and shall not be issued then if the Congress, within that 30-day period, enacts a joint resolution prohibiting the proposed export.

If the President states in his certification that an emergency exists which requires the proposed export in the national security interests of the United States, thus waiving the requirements of subparagraphs (A) and (B) of this paragraph, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate issuance of the export license and a discussion of the national security interests involved.

(3)(A) Any joint resolution under this subsection shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(d) Commercial technical assistance or manufacturing licensing agreements with non-North Atlantic Treaty Organization member countries; submission of Presidential certification; contents

(1) In the case of an approval under section 2778 of this title of a United States commercial technical assistance or manufacturing licensing agreement which involves the manufacture abroad of any item of significant combat equipment on the United States Munitions List, before such approval is given, the President shall submit a certification with respect to such proposed commercial agreement in a manner similar to the certification required under subsection (c)(1) of this section containing comparable information, except that the last sentence of such subsection shall not apply to certifications submitted pursuant to this subsection.

(2) A certification under this subsection shall be submitted—

(A) at least 15 days before approval is given in the case of an agreement for or in a country which is a member of the North Atlantic Treaty Organization or Australia, Japan, or New Zealand; and

(B) at least 30 days before approval is given in the case of an agreement for or in any other country;

unless the President states in his certification that an emergency exists which requires the im-

mediate approval of the agreement in the national security interests of the United States.

(3) If the President states in his certification that an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, thus waiving the requirements of paragraph (4), he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate the immediate approval of the agreement and a discussion of the national security interests involved.

(4) Approval for an agreement subject to paragraph (1) may not be given under section 2778 of this title if the Congress, within the 15-day or 30-day period specified in paragraph (2)(A) or (B), as the case may be, enacts a joint resolution prohibiting such approval.

(5)(A) Any joint resolution under paragraph (4) shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(B) For the purpose of expediting the consideration and enactment of joint resolutions under paragraph (4), a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(e) Definitions

For purposes of this section—

(1) the term ''offset agreement'' means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense service from the supplier; and

(2) the term ''United States person'' means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, district, territory, or possession thereof; or

(ii) owned or controlled in fact by individuals described in subparagraph (A).

(e)[2] Publication of arms sales certifications

The President shall cause to be published in the Federal Register, upon transmittal to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate, the full unclassified text of each numbered certification submitted pursuant to subsection (b) of this section and each notification of a proposed commercial sale submitted under subsection (c) of this section.

(Pub. L. 90–629, ch. 3, § 36, Oct. 22, 1968, 82 Stat. 1326; Pub. L. 93–189, § 25(10), Dec. 17, 1973, 87 Stat. 731; Pub. L. 93–559, § 45(a)(5), Dec. 30, 1974, 88 Stat. 1814; Pub. L. 94–329, title II, § 211(a), title VI, § 604(a), June 30, 1976, 90 Stat. 740, 766; Pub. L. 95–384, § 21, Sept. 26, 1978, 92 Stat. 741; Pub. L. 96–92, §§ 16(b), 19(a), (c), 20(b), Oct. 29, 1979, 93 Stat. 708–710; Pub. L. 96–533, title I, §§ 105(c), (d), 107(b), 109(f), Dec. 16, 1980, 94 Stat. 3134, 3136, 3138; Pub. L. 97–113, title I, §§ 101(c)–(e), 102(b), 109(d)(2), Dec. 29, 1981, 95 Stat. 1520, 1526; Pub. L. 99–83, title I, §§ 117, 118, title XII, § 1209(c), Aug. 8, 1985, 99 Stat. 202, 203, 279; Pub. L. 99–247, § 1(b), (c), Feb. 12, 1986, 100 Stat. 9; Pub. L. 101–222, §§ 3(b), 7, Dec. 12, 1989, 103 Stat. 1896, 1899; Pub. L. 103–236, title VII, §§ 732, 735(a), (b), Apr. 30, 1994, 108 Stat. 503, 505, 506; Pub. L. 103–437, § 9(a)(7), Nov. 2, 1994, 108 Stat. 4588; Pub. L. 104–164, title I, §§ 141(c), (d), 155, July 21, 1996, 110 Stat. 1431, 1432, 1440; Pub. L. 104–201, div. A, title X, § 1045(a), Sept. 23, 1996, 110 Stat. 2644.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a)(7), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapters 2, 5, 6, or 8 of part II of that Act are classified generally to parts II (§ 2311 et seq.), V (§ 2347 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.), respectively, of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The National Security Act of 1947, referred to in subsec. (a)(11), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the National Security Act of 1947 is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsecs. (b)(2) and (c)(3)(A), is section 601(b) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and was not classified to the Code.

Section 2768 of this title, referred to in subsec. (b)(4), was repealed by Pub. L. 104–106, div. A, title X, § 1064(a), Feb. 10, 1996, 110 Stat. 445.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (d)(5)(A), is section 601(b) of Pub. L. 94–329, June 30, 1976, 90 Stat. 729, which made provision for expedited procedures in the Senate, and is not classified to the Code.

AMENDMENTS

1996—Subsec. (a)(12). Pub. L. 104–201 added par. (12).

Subsec. (c)(2)(A), (B). Pub. L. 104–164, § 141(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) shall not be issued until at least 30 calendar days after the Congress receives such certification; and

''(B) shall not be issued then if the Congress, within such 30-day period, enacts a joint resolution prohibiting the proposed export, except that this subparagraph does not apply with respect to a license issued for an export to the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand.''

Subsec. (d). Pub. L. 104–164, § 141(d), designated existing provisions as par. (1), struck out ''for or in a country not a member of the North Atlantic Treaty Organization'' after ''manufacturing licensing agreement'', and added pars. (2) to (5).

Subsec. (e). Pub. L. 104–164, § 155, added subsec. (e) relating to publication of arms sales certifications.

1994—Subsec. (b)(1). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations''.

[2] So in original. Probably should be ''(f)''.

Pub. L. 103–236, §§732(a)(1), 735(a), inserted after second sentence ''In a case in which such articles or services listed on the Missile Technology Control Regime Annex are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 2797c of this title), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. Each such numbered certification shall contain an item indicating whether any offset agreement is proposed to be entered into in connection with such letter of offer to sell (if known on the date of transmittal of such certification).''

Subsec. (b)(1)(C). Pub. L. 103–236, §732(a)(2), inserted ''and a description from such contractor of any offset agreements proposed to be entered into in connection with such sale'' after ''sold''.

Subsec. (c)(1). Pub. L. 103–437 substituted ''Foreign Affairs'' for ''International Relations''.

Pub. L. 103–236, §735(b), which directed amendment of par. (1) by inserting after ''in consultation with the Secretary of Defense.'' the following new sentence: ''In a case in which such articles or services are listed on the Missile Technology Control Regime Annex and are intended to support the design, development, or production of a Category I space launch vehicle system (as defined in section 2797c of this title), such report shall include a description of the proposed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy.'', was executed by making the insertion after ''in consultation with the Secretary of Defense and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement).'' to reflect the probable intent of Congress and the intervening amendment by Pub. L. 103–236, §732(b)(2). See below.

Pub. L. 103–236, §732(b)(2), inserted ''and a description from the person who has submitted the license application of any offset agreement proposed to be entered into in connection with such export (if known on the date of transmittal of such statement)'' after ''Secretary of Defense''.

Pub. L. 103–236, §732(b)(1), inserted after first sentence ''Each such numbered certification shall also contain an item indicating whether any offset agreement is proposed to be entered into in connection with such export (if known on the date of transmittal of such certification).''

Subsec. (e). Pub. L. 103–236, §732(c), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–222, §7(b), inserted '', and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum'' after ''(b)(1) of this section'' in introductory provisions.

Subsec. (a)(10), (11). Pub. L. 101–222, §7(a), added pars. (10) and (11).

Subsec. (b)(1)(D)(ii) to (v). Pub. L. 101–222, §3(b), added cl. (ii) and redesignated former cls. (ii) through (iv) as (iii) through (v), respectively.

1986—Subsec. (b)(1). Pub. L. 99–247, §1(b)(1), substituted ''enacts a joint resolution prohibiting'' for ''adopts a concurrent resolution stating that it objects to'' in concluding provisions.

Subsec. (b)(2). Pub. L. 99–247, §1(b)(2), inserted ''joint'' before ''resolution'' in four places.

Subsec. (b)(3). Pub. L. 99–247, §1(b)(3), substituted ''enactment of joint resolutions'' for ''adoption of concurrent resolutions'' and ''such joint resolution'' for ''such resolution''.

Subsec. (c)(2)(B). Pub. L. 99–247, §1(c)(1), substituted ''enacts a joint resolution prohibiting'' for ''adopts a concurrent resolution stating that it objects to''.

Subsec. (c)(3)(A). Pub. L. 99–247, §1(c)(2), inserted ''joint'' before ''resolution''.

Subsec. (c)(3)(B). Pub. L. 99–247, §1(c)(3), substituted ''enactment of joint resolutions'' for ''adoption of concurrent resolutions'' and ''such joint resolution'' for ''such resolution''.

1985—Subsec. (a)(5). Pub. L. 99–83, §1209(c)(1), substituted ''sales'' for ''cash sales'' and struck out provisions relating to credits under section 2763 of this title and guaranty agreements under section 2764 of this title.

Subsec. (a)(6). Pub. L. 99–83, §1209(c)(2), substituted ''sales expected to be made to'' for ''cash sales expected to be made and credits expected to be extended to''.

Subsec. (a)(7). Pub. L. 99–83, §117, amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''an estimate of the number of officers and employees of the United States Government and of United States civilian contract personnel present in each such country at the end of that quarter for assignments in implementation of sales and commercial exports under this chapter;''.

Subsec. (b)(1). Pub. L. 99–83, §118(1), inserted requirement respecting detailed justification of reasons for sale of sensitive articles or services.

Subsec. (b)(5). Pub. L. 99–83, §118(2), added par. (5).

1981—Subsec. (a)(10). Pub. L. 97–113, §109(d)(2), struck out par. (10) which required that Presidential report to Congress contain a listing (classified if necessary) of property valued at $1,000,000 or more which was leased, during the quarter for which a report was required, to a foreign government for a period of more than six months under section 2667 of title 10. See section 2796 et seq. of this title.

Subsec. (b)(1). Pub. L. 97–113, §§101(c), 102(b)(1), increased the certification requirement limits to $50,000,000 and $14,000,000 from $25,000,000 and $7,000,000 respecting offers to sell defense articles or services, and major defense equipment; and prescribed a fifteen-calendar-day period after receiving a certification for a concurrent resolution objecting to a proposed sale to the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand, and made the existing thirty-calendar-day period applicable only with respect to a proposed sale to any other country or organization.

Subsec. (b)(2). Pub. L. 97–113, §102(b)(2), authorized a motion in the Senate for the discharge of the committee to which a resolution respecting the North Atlantic Treaty Organization, any member country of such Organization, Japan, Australia, or New Zealand was referred for failure to report the resolution at end of five calendar days after its introduction.

Subsec. (c)(1). Pub. L. 97–113, §101(d), increased sales contract limits to $14,000,000 and $50,000,000 from $7,000,000 and $25,000,000 respecting sales of major defense equipment and defense articles or services.

Subsec. (d). Pub. L. 97–113, §101(e), substituted reference to subsec. ''(c)(1)'' for ''(c)'' of this section.

1980—Subsec. (a)(9), (10). Pub. L. 96–533, §§105(c), 109(f), added pars. (9) and (10).

Subsec. (b)(1). Pub. L. 96–533, §105(d), required certification respecting offer to sell any design and construction services for $200,000,000 or more, required such certification to contain the information specified in subsec. (a)(9)(A)–(D) of this section, required such certification to contain an item identifying the sensitivity of technology contained in the design and construction services, and made subpar. (A), (C), (E), (I)–(N) provisions applicable to design and construction services.

Subsec. (c). Pub. L. 96–533, §107(b), designated existing provisions as par. (1), struck out ''not less than 30 days'' before ''before issuing such license'', redesignated as cls. (A) to (C) former pars. (1) to (3), and substituted ''clause (B)'' and ''clause (C)'' for ''paragraph (1)'' and ''paragraph (2)'', respectively, and added pars. (2) and (3).

1979—Subsec. (a). Pub. L. 96–92, §19(a), increased to sixty from thirty days the period for submission of the President's report at end of each quarter and struck out par. (9) which required that the report contain an analysis and description of the services of Federal personnel under provisions relating to sales from stock, including numbers employed.

Subsec. (b)(1). Pub. L. 96–92, §§ 19(c), 20(b), required executive emergency justification statement and the numbered certifications to contain an item, classified if necessary, identifying the sensitivity of technology contained in the defense articles or defense services proposed to be sold.

Subsec. (b)(4). Pub. L. 96–92, § 16(b), added par. (4).

1978—Subsec. (b)(1)(D), (N) to (P). Pub. L. 95–384 in subpar. (D) substituted provisions requiring an evaluation relating to the proposed sale to be prepared by the Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense for provisions requiring an analysis of the arms control impact pertinent to the offer to sell prepared in consultation with the Secretary of Defense and added subpars. (N) to (P).

1976—Subsec. (a). Pub. L. 94–329, §§ 211(a), 604(a)(1), expanded existing provisions to provide for increased comprehensiveness of the quarterly reports on sales of defense articles or defense services, whether through governmental channels or commercial channels.

Subsec. (b). Pub. L. 94–329, §§ 211(a), 604(a)(2), increased from 20 days to 30 days the period allowed Congress to reject a proposed offer to sell defense articles or defense services and inserted provisions covering any major defense equipment for $7,000,000 or more, requiring additional information with respect to any letter of offer to sell defense articles or defense services if requested by Congress and requiring that a certification be transmitted pursuant to this subsection in unclassified form unless public disclosure would be detrimental to the United States.

Subsec. (c). Pub. L. 94–329, § 211(a), substituted provisions relating to application by person for license for export of any major defense equipment sold and contracted for $7,000,000 or more or defense articles or defense services for $25,000,000 or more, requiring the President to transmit to Congress an unclassified numbered certification with respect to such application, for provisions construing this section as not modifying in any way section 1934 of this title.

Subsec. (d). Pub. L. 94–329, § 211(a), added subsec. (d).

1974—Subsecs. (a), (b). Pub. L. 93–559 added subsecs. (a) and (b).

1973—Pub. L. 93–189 struck out subsec. (a) which required the Secretary of State to transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate semiannual reports of all exports of significant defense articles on the United States munitions list to foreign governments, etc., and subsec. (b) which provided for the inclusion in the presentation material submitted to the Congress during consideration of amendments to this chapter or Acts appropriating funds under authority of this chapter annual tables showing the dollar value of cash and credit foreign military sales orders, commitments to order, etc.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENTS

Section 1045(b) of Pub. L. 104–201 provided that: ''Paragraph (12) of section 36(a) of the Arms Export Control Act [22 U.S.C. 2776(a)(12)], as added by subsection (a)(3), does not apply with respect to an agreement described in such paragraph entered into before the date of the enactment of this Act [Sept. 23, 1996].''

Amendment by section 141(c), (d) of Pub. L. 104–164 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 141(f) of Pub. L. 104–164, set out as a note under section 2753 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 211(b) of Pub. L. 94–329 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to letters of offer for which a certification is transmitted pursuant to section 36(b) of the Arms Export Control Act [subsec. (b) of this section] on or after the date of enactment of this Act [June 30, 1976] and to export licenses for which an application is filed under section 38 of such Act [section 2778 of this title] on or after such date.''

Section 604(c) of Pub. L. 94–329 provided that: ''The amendments made by this section [amending this section and enacting section 2779 of this title] shall take effect sixty days after the date of enactment of this Act [June 30, 1976].''

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b)(1) of this section, except with respect to certification of an emergency under subsec. (b)(1), delegated to Secretary of Defense, with Secretary of Defense required to consult with other specific agencies in implementing certain delegated functions, by section 1(j) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

Functions of President under subsecs. (c) and (d) of this section delegated to Secretary of State by section 1(k) of Ex. Ord. No. 11958.

NATIONAL DISCLOSURE POLICY FOR SENSITIVE WEAPONS TECHNOLOGY; REPORT TO CONGRESS

Section 20(a) of Pub. L. 96–92 directed President to undertake a thorough review of interagency procedures and disclosure criteria used by United States in determining whether sensitive weapons technology will be transferred to other countries, and not later than Feb. 15, 1980 to transmit a report to Congress setting forth the results of such review, together with such recommendations as are necessary to improve the current disclosure system, prior to repeal by Pub. L. 97–113, title VII, § 734(a)(11), Dec. 29, 1981, 95 Stat. 1560.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2373, 2753, 2766, 2767, 2771, 3402 of this title.

§ 2777. Fiscal provisions relating to foreign military sales credits

(a) Permissible uses of cash payments under sections 2761, 2762, 2763, and 2769

Cash payments received under sections 2761, 2762, and 2769 of this title and advances received under section 2763 of this title shall be available solely for payments to suppliers (including the military departments) and refunds to purchasers and shall not be available for financing credits and guaranties.

(b) Transfer of funds to miscellaneous receipts of Treasury

Amounts received from foreign governments and international organizations as repayments for credits extended pursuant to section 2763 of this title, amounts received from the disposition of instruments evidencing indebtedness under section 2764(b) of this title (excluding such portion of the sales proceeds as may be required at the time of disposition to be obligated as a reserve for payment of claims under guaranties issued pursuant to section 2764(b) of this title, which sums are made available for such obligations), and other collections (including fees and interest) shall be transferred to the miscellaneous receipts of the Treasury.

(c) Credit of funds to reserve under section 2764(c)

Notwithstanding the provisions of subsection (b) of this section, to the extent that any of the funds constituting the reserve under section 2764(c) of this title are paid out for a claim arising out of a loan guaranteed under section 2764 of this title, amounts received from a foreign government or international organization after the date of such payment, with respect to such claim, shall be credited to such reserve, shall be merged with the funds in such reserve, and shall be available for any purpose for which funds in such reserve are available.

(Pub. L. 90–629, ch. 3, § 37, Oct. 22, 1968, 82 Stat. 1326; Pub. L. 93–189, § 25(11), Dec. 17, 1973, 87 Stat. 731; Pub. L. 96–533, title I, §§ 104(b), 105(e)(1), Dec. 16, 1980, 94 Stat. 3133, 3135.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–533, § 105(e)(1), inserted reference to section 2769 of this title.

Subsec. (c). Pub. L. 96–533, § 104(b), added subsec. (c).

1973—Subsec. (b). Pub. L. 93–189 inserted provisions relating to indebtedness under section 2764(b) of this title and exclusions of portions of the sales proceeds required at the time of disposition as a reserve for payment of claims under guaranties issued under section 2764(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2291c of this title; title 10 section 114.

§ 2778. Control of arms exports and imports

(a) Presidential control of exports and imports of defense articles and services, guidance of policy, etc.; designation of United States Munitions List; issuance of export licenses; condition for export; negotiations information

(1) In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services. The President is authorized to designate those items which shall be considered as defense articles and defense services for the purposes of this section and to promulgate regulations for the import and export of such articles and services. The items so designated shall constitute the United States Munitions List.

(2) Decisions on issuing export licenses under this section shall be made in coordination with the Director of the United States Arms Control and Disarmament Agency, taking into account the Director's assessment as to whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements. The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that the issuance of an export license under this section would be detrimental to the national security of the United States, to recommend to the President that such export license be disapproved.

(3) In exercising the authorities conferred by this section, the President may require that any defense article or defense service be sold under this chapter as a condition of its eligibility for export, and may require that persons engaged in the negotiation for the export of defense articles and services keep the President fully and currently informed of the progress and future prospects of such negotiations.

(b) Registration and licensing requirements for manufacturers, exporters, or importers of designated defense articles and defense services

(1)(A)(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a)(1) of this section shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State or local law enforcement agency) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this chapter or any other foreign assistance or sales program of the United States, whether or not enhanced in value or improved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii)(I) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a)(1) of this section, or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this chapter, except that no license shall be required for such activities undertaken by or for an agency of the United States Government—

(aa) for use by an agency of the United States Government; or

(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(IV) For purposes of this clause, the term ''foreign defense article or defense service'' includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.

(B)[1] The prohibition under such regulations required by the second sentence of subparagraph (A) shall not extend to any military firearms (or ammunition, components, parts, accessories, and attachments for such firearms) of United States manufacture furnished to any foreign government by the United States under this chapter or any other foreign assistance or sales program of the United States if—

(i) such firearms are among those firearms that the Secretary of the Treasury is, or was at any time, required to authorize the importation of by reason of the provisions of section 925(e) of title 18 (including the requirement for the listing of such firearms as curios or relics under section 921(a)(13) of that title); and

(ii) such foreign government certifies to the United States Government that such firearms are owned by such foreign government.

(B)[1] A copy of each registration made under this paragraph shall be transmitted to the Secretary of the Treasury for review regarding law enforcement concerns. The Secretary shall report to the President regarding such concerns as necessary.

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports or imports made by or for an agency of the United States Government (A) for official use by a department or agency of the United States Government, or (B) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(3)(A) For each of the fiscal years 1988 and 1989, $250,000 of registration fees collected pursuant to paragraph (1) shall be credited to a Department of State account, to be available without fiscal year limitation. Fees credited to that account shall be available only for the payment of expenses incurred for—

(i) contract personnel to assist in the evaluation of munitions control license applications, reduce processing time for license applications, and improve monitoring of compliance with the terms of licenses; and

(ii) the automation of munitions control functions and the processing of munitions control license applications, including the development, procurement, and utilization of computer equipment and related software.

(B) The authority of this paragraph may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Criminal violations; punishment

Any person who willfully violates any provision of this section or section 2779 of this title, or any rule or regulation issued under either section, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than $1,000,000 or imprisoned not more than ten years, or both.

(d) Repealed. Pub. L. 96–70, title III, § 3303(a)(4), Sept. 27, 1979, 93 Stat. 499

(e) Enforcement powers of President

In carrying out functions under this section with respect to the export of defense articles and defense services, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (g) of section 11 of the Export Administration Act of 1979 [50 App. U.S.C. 2410(c), (d), (e), and (g)], and by subsections (a) and (c) of section 12 of such Act [50 App. U.S.C. 2411(a) and (c)], subject to the same terms and conditions as are applicable to such powers under such Act [50 App. U.S.C. 2401 et seq.], except that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest. Nothing in this subsection shall be construed as authorizing the withholding of information from the Congress. Notwithstanding section 11(c) of the Export Administration Act of 1979, the civil penalty for each violation involving controls imposed on the export of defense articles and defense services under this section may not exceed $500,000.

(f) Periodic review of items on Munitions List

The President shall periodically review the items on the United States Munitions List to determine what items, if any, no longer warrant export controls under this section. The results of such reviews shall be reported to the Speaker of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such a report shall be submitted at least 30 days before any item is removed from the Munitions List and shall describe the nature of any controls to be imposed on that item under the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.].

(g) Identification of persons convicted or subject to indictment for violations of certain provisions

(1) The President shall develop appropriate mechanisms to identify, in connection with the export licensing process under this section—

[1] So in original. There are two subpars. designated ''(B)''.

(A) persons who are the subject of an indictment for, or have been convicted of, a violation under—

(i) this section,

(ii) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410),

(iii) section 793, 794, or 798 of title 18 (relating to espionage involving defense or classified information),

(iv) section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16),

(v) section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. App. 1705) [50 U.S.C. 1705],

(vi) section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2),

(vii) chapter 105 of title 18 (relating to sabotage),

(viii) section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b)),

(ix) section 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276),

(x) section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421), or

(xi) section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c));

(B) persons who are the subject of an indictment or have been convicted under section 371 of title 18 for conspiracy to violate any of the statutes cited in subparagraph (A); and

(C) persons who are ineligible—

(i) to contract with,

(ii) to receive a license or other form of authorization to export from, or

(iii) to receive a license or other form of authorization to import defense articles or defense services from,

any agency of the United States Government.

(2) The President shall require that each applicant for a license to export an item on the United States Munitions List identify in the application all consignees and freight forwarders involved in the proposed export.

(3) If the President determines—

(A) that an applicant for a license to export under this section is the subject of an indictment for a violation of any of the statutes cited in paragraph (1),

(B) that there is reasonable cause to believe that an applicant for a license to export under this section has violated any of the statutes cited in paragraph (1), or

(C) that an applicant for a license to export under this section is ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from, any agency of the United States Government,

the President may disapprove the application. The President shall consider requests by the Secretary of the Treasury to disapprove any export license application based on these criteria.

(4) A license to export an item on the United States Munitions List may not be issued to a person—

(A) if that person, or any party to the export, has been convicted of violating a statute cited in paragraph (1), or

(B) if that person, or any party to the export, is at the time of the license review ineligible to receive export licenses (or other forms of authorization to export) from any agency of the United States Government,

except as may be determined on a case-by-case basis by the President, after consultation with the Secretary of the Treasury, after a thorough review of the circumstances surrounding the conviction or ineligibility to export and a finding by the President that appropriate steps have been taken to mitigate any law enforcement concerns.

(5) A license to export an item on the United States Munitions List may not be issued to a foreign person (other than a foreign government).

(6) The President may require a license (or other form of authorization) before any item on the United States Munitions List is sold or otherwise transferred to the control or possession of a foreign person or a person acting on behalf of a foreign person.

(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.

(8) Upon request of the Secretary of State, the Secretary of Defense and the Secretary of the Treasury shall detail to the office primarily responsible for export licensing functions under this section, on a nonreimbursable basis, personnel with appropriate expertise to assist in the initial screening of applications for export licenses under this section in order to determine the need for further review of those applications for foreign policy, national security, and law enforcement concerns.

(9) For purposes of this subsection—

(A) the term ''foreign corporation'' means a corporation that is not incorporated in the United States;

(B) the term ''foreign government'' includes any agency or subdivision of a foreign government, including an official mission of a foreign government;

(C) the term ''foreign person'' means any person who is not a citizen or national of the United States or lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], and includes foreign corporations, international organizations, and foreign governments;

(D) the term ''party to the export'' means—

(i) the president, the chief executive officer, and other senior officers of the license applicant;

(ii) the freight forwarders or designated exporting agent of the license application; and

(iii) any consignee or end user of any item to be exported; and

(E) the term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities.

(h) Judicial review of designation of items as defense articles or services

The designation by the President (or by an official to whom the President's functions under subsection (a) of this section have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall not be subject to judicial review.

(Pub. L. 90–629, ch. 3, § 38, as added Pub. L. 94–329, title II, § 212(a)(1), June 30, 1976, 90 Stat. 744; amended Pub. L. 95–92, § 20, Aug. 4, 1977, 91 Stat. 623; Pub. L. 96–70, title III, § 3303(a)(4), Sept. 27, 1979, 93 Stat. 499; Pub. L. 96–72, § 22(a), Sept. 29, 1979, 93 Stat. 535; Pub. L. 96–92, § 21, Oct. 29, 1979, 93 Stat. 710; Pub. L. 96–533, title I, § 107(a), (c), Dec. 16, 1980, 94 Stat. 3136; Pub. L. 97–113, title I, §§ 106, 107, Dec. 29, 1981, 95 Stat. 1522; Pub. L. 99–64, title I, § 123(a), July 12, 1985, 99 Stat. 156; Pub. L. 99–83, title I, § 119(a), (b), Aug. 8, 1985, 99 Stat. 203, 204; Pub. L. 100–202, § 101(b) [title VIII, § 8142(a)], Dec. 22, 1987, 101 Stat. 1329–43, 1329–88; Pub. L. 100–204, title XII, § 1255, Dec. 22, 1987, 101 Stat. 1429; Pub. L. 101–222, §§ 3(a), 6, Dec. 12, 1989, 103 Stat. 1896, 1899; Pub. L. 103–236, title VII, § 714(a)(1), Apr. 30, 1994, 108 Stat. 497; Pub. L. 104–164, title I, §§ 151(a), 156, July 21, 1996, 110 Stat. 1437, 1440.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsecs. (e) and (f), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

Section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2), referred to in subsec. (g)(1)(A)(vi), probably means section 104 of the Foreign Corrupt Practices Act of 1977, which is classified to section 78dd–2 of Title 15, Commerce and Trade.

The Immigration and Nationality Act, referred to in subsec. (g)(9)(C), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

REFERENCE TO SECTION 1934 OF THIS TITLE DEEMED REFERENCE TO THIS SECTION

Section 212(b)(1) of Pub. L. 94–329 provided in part that: ''Any reference to such section [section 1934 of this title] shall be deemed to be a reference to section 38 of the Arms Export Control Act [this section] and any reference to licenses issued under section 38 of the Arms Export Control Act [this section] shall be deemed to include a reference to licenses issued under section 414 of the Mutual Security Act of 1954.''

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–164, § 151(a), designated existing provisions of subpar. (A) as cl. (i) and added cl. (ii).

Subsec. (e). Pub. L. 104–164, § 156, inserted before period at end of first sentence '', except that the names of the countries and the types and quantities of defense articles for which licenses are issued under this section shall not be withheld from public disclosure unless the President determines that the release of such information would be contrary to the national interest''.

1994—Subsec. (a)(2). Pub. L. 103–236 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Decisions on issuing export licenses under this section shall be made in coordination with the Director of the United States Arms Control and Disarmament Agency and shall take into account the Director's opinion as to whether the export of an article will contribute to an arms race, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.''

1989—Subsec. (a)(2). Pub. L. 101–222, § 3(a), inserted ''support international terrorism,'' after ''arms race,''.

Subsec. (h). Pub. L. 101–222, § 6, added subsec. (h).

1987—Subsec. (b)(1). Pub. L. 100–204, § 1255(b), designated existing provisions as subpar. (A) and added subpar. (B) relating to review by Secretary of the Treasury of munitions control registrations.

Pub. L. 100–202 designated existing provisions as subpar. (A) and added subpar. (B) relating to allowance of return to United States of certain military firearms, etc., under certain circumstances.

Subsec. (b)(3). Pub. L. 100–204, § 1255(c), added par. (3).

Subsec. (g). Pub. L. 100–204, § 1255(a), added subsec. (g).

1985—Subsec. (c). Pub. L. 99–83, § 119(a), inserted ''for each violation'' before ''not more'' and substituted ''$1,000,000'' for ''$100,000'' and ''ten'' for ''two''.

Subsec. (e). Pub. L. 99–83, § 119(b), inserted provisions relating to civil penalty for each violation.

Pub. L. 99–64 substituted ''(g)'' for ''(f)''.

1981—Subsec. (b)(3). Pub. L. 97–113, § 106, struck out par. (3) which placed a $100,000,000 ceiling on commercial arms exports of major defense equipment to all countries other than NATO countries, Japan, Australia, and New Zealand.

Subsec. (f). Pub. L. 97–113, § 107, added subsec. (f).

1980—Subsec. (a)(3). Pub. L. 96–533, § 107(c), added par. (3).

Subsec. (b)(3). Pub. L. 96–533, § 107(a), increased the limitation in the sale of major defense equipment exports to $100,000,000 from $35,000,000.

1979—Subsec. (b)(3). Pub. L. 96–92 increased the limitation in the sale of major defense equipment exports to $35,000,000 from $25,000,000.

Subsec. (d). Pub. L. 96–70 struck out subsec. (d) which provided that this section applies to and within the Canal Zone.

Subsec. (e). Pub. L. 96–72 substituted ''subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979, and by subsections (a) and (c) of section 12 of such Act'' for ''sections 6(c), (d), (e), and (f) and 7(a) and (c) of the Export Administration Act of 1969''.

1977—Subsec. (b)(3). Pub. L. 95–92 inserted provisions relating to exceptions to prohibitions against issuance of licenses under this section and procedures applicable for implementation of such exceptions.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 151(b) of Pub. L. 104–164 provided that: ''Section 38(b)(1)(A)(ii) of the Arms Export Control Act, as added by subsection (a) [22 U.S.C. 2778(b)(1)(A)(ii)], shall apply with respect to brokering activities engaged in beginning on or after 120 days after the enactment of this Act [July 21, 1996].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(b) [title VIII, § 8142(b)] of Pub. L. 100–202 provided that:

''(1) Except as provided in paragraphs (2) and (3), subparagraph (B) of section 38(b)(1) of the Arms Export Control Act [subsec. (b)(1)(B) of this section], as added by subsection (a), shall take effect at the end of the ninety-day period beginning on the date of the enactment of this Act [Dec. 22, 1987].

''(2)(A) Such subparagraph shall take effect on the date of the enactment of this Act [Dec. 22, 1987] with re-

spect to any military firearms or ammunition (or components, parts, accessories and attachments for such firearms) with respect to which an import permit was issued by the Secretary of the Treasury on or after July 1, 1986, irrespective of whether such import permit was subsequently suspended, revoked, or withdrawn by the Secretary of the Treasury based on the application of section 38(b)(1) of the Arms Export Control Act [subsec. (b)(1) of this section] as in effect on the day before the date of the enactment of this Act.

''(B) In the case of an import permit described in subparagraph (A) which was suspended, revoked, or withdrawn by the Secretary of the Treasury during the period beginning on July 1, 1986, and ending on the date of the enactment of this Act [Dec. 22, 1987] under the conditions described in such subparagraph, such import permit shall be reinstated and reissued immediately upon the enactment of this Act, and in any event not later than ten days after the date of the enactment of this Act.

''(3) During the period preceding the revision of regulations issued under section 38(b)(1) of the Arms Export Control Act [subsec. (b)(1) of this section] to reflect the provisions of subparagraph (B) of such section, as added by subsection (a), such regulations may not be applied with respect to matters covered by paragraph (2) of this subsection so as to prohibit or otherwise restrict the importation of firearms described in that paragraph or in any other manner inconsistent with that paragraph, notwithstanding that such regulations have not yet been so revised: *Provided*, That this section shall not take effect if during the twenty day period beginning on the date of enactment of this section [Dec. 22, 1987] the Secretary of State, the Secretary of Defense, or the Secretary of the Treasury notifies Congress that he has an objection to the intent of this section: *Provided further*, That the Attorney General shall, within the period of time stated in the first proviso, submit a certification to Congress indicating whether the enactment of this section will interfere with any ongoing criminal investigation with respect to this section. If a certification of criminal investigative interference or an objection to the intent of this section is made, as herein provided, no permit shall be issued to anyone.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 119(c) of Pub. L. 99–83 provided that: ''This section [amending this section] shall take effect upon the date of enactment of this Act [Aug. 8, 1985] or October 1, 1985, whichever is later. The amendments made by this section apply with respect to violations occurring after the effective date of this section.''

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 and Prior Provisions note set out under section 2413 of Title 50, Appendix, War and National Defense.

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section, with certain exceptions, delegated to Secretary of State, with concurrence of Secretary of Defense required for designations of items or categories of items which are considered as defense articles or services subject to export control under this section, by section 1(*l*)(1) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

Functions of President under this section relating to the control of import of defense articles and services transferred to Secretary of the Treasury, with certain requirements for considering the views of Secretary of State and for receiving concurrence of Secretary of State and Secretary of Defense for designations of items or categories of items which are considered as defense articles and services subject to import control under this section, by section 1(*l*)(2) of Ex. Ord. No. 11958.

Functions of President which involve subsec. (e) of this section and are agreed to by Secretary of State and Secretary of Commerce delegated to Secretary of Commerce to be carried out on behalf of Secretary of State by section 1(*l*)(3) of Ex. Ord. No. 11958.

LANDMINE EXPORT MORATORIUM

Pub. L. 102–484, div. A, title XIII, § 1365, Oct. 23, 1992, 106 Stat. 2561, as amended by Pub. L. 103–160, div. A, title XI, § 1182(c)(3), title XIV, § 1423(c), Nov. 30, 1993, 107 Stat. 1772, 1832; Pub. L. 104–107, title V, § 558, Feb. 12, 1996, 110 Stat. 743; Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 556], Sept. 30, 1996, 110 Stat. 3009–121, 3009–161, provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) Anti-personnel landmines, which are specifically designed to maim and kill people, have been used indiscriminately in dramatically increasing numbers, primarily in insurgencies in poor developing countries. Noncombatant civilians, including tens of thousands of children, have been the primary victims.

''(2) Unlike other military weapons, landmines often remain implanted and undiscovered after conflict has ended, causing untold suffering to civilian populations. In Afghanistan, Cambodia, Laos, Vietnam, and Angola, tens of millions of unexploded landmines have rendered whole areas uninhabitable. In Afghanistan, an estimated hundreds of thousands of people have been maimed and killed by landmines during the 14-year civil war. In Cambodia, more than 20,000 civilians have lost limbs and another 60 are being maimed each month from landmines.

''(3) Over 35 countries are known to manufacture landmines, including the United States. However, the United States is not a major exporter of landmines. During the past ten years the Department of State has approved ten licenses for the commercial export of anti-personnel landmines valued at $980,000, and during the past five years the Department of Defense has approved the sale of 13,156 anti-personnel landmines valued at $841,145.

''(4) The United States signed, but has not ratified, the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed To Be Excessively Injurious or To Have Indiscriminate Effects. The Convention prohibits the indiscriminate use of landmines.

''(5) When it signed the Convention, the United States stated: 'We believe that the Convention represents a positive step forward in efforts to minimize injury or damage to the civilian population in time of armed conflict. Our signature of the Convention reflects the general willingness of the United States to adopt practical and reasonable provisions concerning the conduct of military operations, for the purpose of protecting noncombatants.'.

''(6) The President should submit the Convention to the Senate for its advice and consent to ratification, and the President should actively negotiate under United Nations auspices or other auspices an international agreement, or a modification of the Convention, to prohibit the sale, transfer or export of anti-personnel landmines. Such an agreement or modification would be an appropriate response to the end of the Cold War and the promotion of arms control agreements to reduce the indiscriminate killing and maiming of civilians.

''(7) The United States should set an example for other countries in such negotiations, by implementing a one-year moratorium on the sale, transfer or export of anti-personnel landmines.

''(b) STATEMENT OF POLICY.—(1) It shall be the policy of the United States to seek verifiable international

agreements prohibiting the sale, transfer, or export, and further limiting the use, production, possession, and deployment of anti-personnel landmines.

''(2) It is the sense of the Congress that the President should actively seek to negotiate under United Nations auspices or other auspices an international agreement, or a modification of the Convention, to prohibit the sale, transfer, or export of anti-personnel landmines.

''(c) MORATORIUM ON TRANSFERS OF ANTI-PERSONNEL LANDMINES ABROAD.—During the eight-year period beginning on October 23, 1992—

''(1) no sale may be made or financed, no transfer may be made, and no license for export may be issued, under the Arms Export Control Act [22 U.S.C. 2751 et seq.], with respect to any anti-personnel landmine; and

''(2) no assistance may be provided under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], with respect to the provision of any anti-personnel landmine.

''(d) DEFINITION.—For purposes of this section, the term 'anti-personnel landmine' means—

''(1) any munition placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person;

''(2) any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act;

''(3) any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.''

ARMS TRANSFERS RESTRAINT POLICY FOR MIDDLE EAST AND PERSIAN GULF REGION

Pub. L. 102–138, title IV, Oct. 28, 1991, 105 Stat. 718, provided that:

''SEC. 401. FINDINGS.

''The Congress finds that—

''(1) nations in the Middle East and Persian Gulf region, which accounted for over 40 percent of the international trade in weapons and related equipment and services during the decade of the 1980's, are the principal market for the worldwide arms trade;

''(2) regional instability, large financial resources, and the desire of arms-supplying governments to gain influence in the Middle East and Persian Gulf region, contribute to a regional arms race;

''(3) the continued proliferation of weapons and related equipment and services contribute further to a regional arms race in the Middle East and Persian Gulf region that is politically, economically, and militarily destabilizing;

''(4) the continued proliferation of unconventional weapons, including nuclear, biological, and chemical weapons, as well as delivery systems associated with those weapons, poses an urgent threat to security and stability in the Middle East and Persian Gulf region;

''(5) the continued proliferation of ballistic missile technologies and ballistic missile systems that are capable of delivering conventional, nuclear, biological, or chemical warheads undermines security and stability in the Middle East and Persian Gulf region;

''(6) future security and stability in the Middle East and Persian Gulf region would be enhanced by establishing a stable military balance among regional powers by restraining and reducing both conventional and unconventional weapons;

''(7) security, stability, peace, and prosperity in the Middle East and Persian Gulf region are important to the welfare of the international economy and to the national security interests of the United States;

''(8) future security and stability in the Middle East and Persian Gulf region would be enhanced through the development of a multilateral arms transfer and control regime similar to those of the Nuclear Suppliers' Group, the Missile Technology Control Regime, and the Australia Chemical Weapons Suppliers Group;

''(9) such a regime should be developed, implemented, and agreed to through multilateral negotiations, including under the auspices of the 5 permanent members of the United Nations Security Council;

''(10) confidence-building arms control measures such as the establishment of a centralized arms trade registry at the United Nations, greater multinational transparency on the transfer of defense articles and services prior to agreement or transfer, cooperative verification measures, advanced notification of military exercises, information exchanges, on-site inspections, and creation of a Middle East and Persian Gulf Conflict Prevention Center, are important to implement an effective multilateral arms transfer and control regime;

''(11) as an interim step, the United States should consider introducing, during the ongoing negotiations on confidence security-building measures at the Conference on Security and Cooperation in Europe (CSCE) [now the Organization for Security and Cooperation in Europe], a proposal regarding the international exchange of information, on an annual basis, on the sale and transfer of major military equipment, particularly to the Middle East and Persian Gulf region; and

''(12) such a regime should be applied to other regions with the ultimate objective of achieving an effective global arms transfer and control regime, implemented and enforced through the United Nations Security Council, that—

''(A) includes a linkage of humanitarian and developmental objectives with security objectives in Third World countries, particularly the poorest of the poor countries; and

''(B) encourages countries selling military equipment and services to consider the following factors before making conventional arms sales: the security needs of the purchasing countries, the level of defense expenditures by the purchasing countries, and the level of indigenous production of the purchasing countries.

''SEC. 402. MULTILATERAL ARMS TRANSFER AND CONTROL REGIME.

''(a) IMPLEMENTATION OF THE REGIME.—

''(1) CONTINUING NEGOTIATIONS.—The President shall continue negotiations among the 5 permanent members of the United Nations Security Council and commit the United States to a multilateral arms transfer and control regime for the Middle East and Persian Gulf region.

''(2) PROPOSING A TEMPORARY MORATORIUM DURING NEGOTIATIONS.—In the context of these negotiations, the President should propose to the 5 permanent members of the United Nations Security Council a temporary moratorium on the sale and transfer of major military equipment to nations in the Middle East and Persian Gulf region until such time as the 5 permanent members agree to a multilateral arms transfer and control regime.

''(b) PURPOSE OF THE REGIME.—The purpose of the multilateral arms transfer and control regime should be—

''(1) to slow and limit the proliferation of conventional weapons in the Middle East and Persian Gulf region with the aim of preventing destabilizing transfers by—

''(A) controlling the transfer of conventional major military equipment;

''(B) achieving transparency among arms suppliers nations through advanced notification of agreement to, or transfer of, conventional major military equipment; and

''(C) developing and adopting common and comprehensive control guidelines on the sale and trans-

fer of conventional major military equipment to the region;

''(2) to halt the proliferation of unconventional weapons, including nuclear, biological, and chemical weapons, as well as delivery systems associated with those weapons and the technologies necessary to produce or assemble such weapons;

''(3) to limit and halt the proliferation of ballistic missile technologies and ballistic missile systems that are capable of delivering conventional, nuclear, biological, or chemical warheads;

''(4) to maintain the military balance in the Middle East and Persian Gulf region through reductions of conventional weapons and the elimination of unconventional weapons; and

''(5) to promote regional arms control in the Middle East and Persian Gulf region.

''(c) ACHIEVING THE PURPOSES OF THE REGIME.—

''(1) CONTROLLING PROLIFERATION OF CONVENTIONAL WEAPONS.—In order to achieve the purposes described in subsection (b)(1), the United States should pursue the development of a multilateral arms transfer and control regime which includes—

''(A) greater information-sharing practices among supplier nations regarding potential arms sales to all nations of the Middle East and Persian Gulf region;

''(B) applying, for the control of conventional major military equipment, procedures already developed by the International Atomic Energy Agency, the Multilateral Coordinating Committee on Export Controls (COCOM), and the Missile Technology Control Regime (MTCR); and

''(C) other strict controls on the proliferation of conventional major military equipment to the Middle East and Persian Gulf region.

''(2) HALTING PROLIFERATION OF UNCONVENTIONAL WEAPONS.—In order to achieve the purposes described in subsections (b)(2) and (3), the United States should build on existing and future agreements among supplier nations by pursuing the development of a multilateral arms transfer and control regime which includes—

''(A) limitations and controls contained in the Enhanced Proliferation Control Initiative;

''(B) limitations and controls contained in the Missile Technology Control Regime (MTCR);

''(C) guidelines followed by the Australia Group on chemical and biological arms proliferation;

''(D) guidelines adopted by the Nuclear Suppliers Group (the London Group); and

''(E) other appropriate controls that serve to halt the flow of unconditional [unconventional] weapons to the Middle East and Persian Gulf region.

''(3) PROMOTION OF REGIONAL ARMS CONTROL AGREEMENTS.—In order to achieve the purposes described in subsections (b)(4) and (5), the United States should pursue with nations in the Middle East and Persian Gulf region—

''(A) the maintenance of the military balance within the region, while eliminating nuclear, biological, and chemical weapons and associated delivery systems, and ballistic missiles;

''(B) the implementation of confidence-building and security-building measures, including advance notification of certain ground and aerial military exercises in the Middle East and the Persian Gulf; and

''(C) other useful arms control measures.

''(d) MAJOR MILITARY EQUIPMENT.—As used in this title, the term 'major military equipment' means—

''(1) air-to-air, air-to-surface, and surface-to-surface missiles and rockets;

''(2) turbine-powered military aircraft;

''(3) attack helicopters;

''(4) main battle tanks;

''(5) submarines and major naval surface combatants;

''(6) nuclear, biological, and chemical weapons; and

''(7) such other defense articles and defense services as the President may determine.

''SEC. 403. LIMITATION ON UNITED STATES ARMS SALES TO THE REGION.

''Beginning 60 days after the date of enactment of the International Cooperation Act of 1991 [probably means H.R. 2508, which had not been enacted into law by the end of the first session of the 102d Congress] or the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 [Oct. 28, 1991], whichever is enacted first, no sale of any defense article or defense service may be made to any nation in the Middle East and Persian Gulf region, and no license may be issued for the export of any defense article or defense service to any nation in the Middle East and Persian Gulf region, unless the President—

''(1) certifies in writing to the relevant congressional committees that the President has undertaken good faith efforts to convene a conference for the establishment of an arms suppliers regime having elements described in section 402; and

''(2) submits to the relevant congressional committees a report setting forth a United States plan for leading the world community in establishing such a multilateral regime to restrict transfers of advanced conventional and unconventional arms to the Middle East and Persian Gulf region.

''SEC. 404. REPORTS TO THE CONGRESS.

''(a) QUARTERLY REPORTS.—Beginning on January 15, 1992, and quarterly thereafter through October 15, 1993, the President shall submit to the relevant congressional committees a report—

''(1) describing the progress in implementing the purposes of the multilateral arms transfer and control regime as described in section 402(b); and

''(2) describing efforts by the United States and progress made to induce other countries to curtail significantly the volume of their arms sales to the Middle East and Persian Gulf region, and if such efforts were not made, the justification for not making such efforts.

''(b) INITIAL REPORT ON TRANSFERS AND REGIONAL MILITARY BALANCE.—Not later than 60 days after the date of enactment of the International Cooperation Act of 1991 or the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, whichever is enacted first, the President shall submit to the relevant congressional committee a report—

''(1) documenting all transfers of conventional and unconventional arms by any nation to the Middle East and Persian Gulf region over the previous calendar year and the previous 5 calendar years, including sources, types, and recipient nations of weapons;

''(2) analyzing the current military balance in the region, including the effect on the balance of transfers documented under paragraph (1);

''(3) describing the progress in implementing the purposes of the multilateral arms transfer and control regime as described in section 402(b);

''(4) describing any agreements establishing such a regime; and

''(5) identifying supplier nations that have refused to participate in such a regime or that have engaged in conduct that violates or undermines such a regime.

''(c) ANNUAL REPORTS ON TRANSFERS AND REGIONAL MILITARY BALANCE.—Beginning July 15, 1992, and every 12 months thereafter, the President shall submit to the relevant congressional committees a report—

''(1) documenting all transfers of conventional and unconventional arms by any nation to the Middle East and Persian Gulf region over the previous calendar year, including sources, types, and recipient nations of weapons;

''(2) analyzing the current military balance in the region, including the effect on the balance of transfer documented under paragraph (1);

''(3) describing the progress in implementing the purposes of the multilateral arms transfer and control regime as described in section 402(b); and

''(4) identifying supplier nations that have refused to participate in such a regime or that have engaged

in conduct that violates or undermines such a regime.

''SEC. 405. RELEVANT CONGRESSIONAL COMMITTEES DEFINED.

''As used in this title, the term 'relevant congressional committees' means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.''

[Ex. Ord. No. 12851, § 3, June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title, delegated to Secretary of State, in consultation with Secretary of Defense and other agencies, certification and reporting functions of the President under sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102–138, set out above.]

[Memorandum of President of the United States, Dec. 27, 1991, 56 F.R. 1069, delegated to Secretary of State, in consultation with heads of other executive agencies and departments, certification and reporting obligations of the President under sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102–138, set out above.]

CONTINUATION OF EXPORT CONTROL REGULATIONS

Section 3 of Ex. Ord. No. 12924, Aug. 19, 1994, 59 F.R. 43437, set out as a note under section 1701 of Title 50, War and National Defense, provided that: ''Provisions for administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative actions issued, taken, or continued in effect pursuant thereto, relating to the administration of section 38(e).''

Prior provisions relating to issuance and continued effect of rules, regulations, orders, licenses, and other forms of administrative action relating to administration of subsec. (e) of this section were contained in the following:

Ex. Ord. No. 12923, § 3, June 30, 1994, 59 F.R. 34551, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12924, § 4, Aug. 19, 1994, 59 F.R. 43438.

Ex. Ord. No. 12867, § 3, Sept. 30, 1993, 58 F.R. 51747, set out as a note under section 1701 of Title 50.

Ex. Ord. No. 12730, § 3, Sept. 30, 1990, 55 F.R. 40373, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12867, Sept. 30, 1993, 58 F.R. 51747.

Ex. Ord. No. 12525, § 3, July 12, 1985, 50 F.R. 28757, set out as a note under section 1701 of Title 50.

Ex. Ord. No. 12470, § 3, Mar. 30, 1984, 49 F.R. 13099, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12525, July 12, 1985, 50 F.R. 28757.

Ex. Ord. No. 12451, § 3, Dec. 20, 1983, 48 F.R. 56563, set out as a note under section 1701 of Title 50.

Ex. Ord. No. 12444, § 3, Oct. 14, 1983, 48 F.R. 48215, formerly set out as a note under section 1701 of Title 50, prior to revocation by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304, 2373, 2415, 2751, 2753, 2767, 2770, 2776, 2779, 2780, 2785, 2791, 2794, 2797a of this title; title 10 sections 2350, 2553, 4543, 4687; title 12 section 635; title 18 sections 1956, 2516; title 26 section 5847; title 29 sections 1662d, 1662d–1; title 50 sections 415, 2332; title 50 App. sections 2410, 2410b, 2416.

§ 2778a. Exportation of uranium depleted in the isotope 235

Upon a finding that an export of uranium depleted in the isotope 235 is incorporated in defense articles or commodities solely to take advantage of high density or pyrophoric characteristics unrelated to its radioactivity, such exports shall be exempt from the provisions of the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and of the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.] when such exports are subject to the controls established under the Arms Export Control Act [22 U.S.C. 2751 et seq.] or the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.].

(Pub. L. 96–533, title I, § 110, Dec. 16, 1980, 94 Stat. 3138.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in text, is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Nuclear Non-Proliferation Act of 1978, referred to in text, is Pub. L. 95–242, Mar. 10, 1978, 92 Stat. 120, as amended, which is classified principally to chapter 47 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

The Arms Export Control Act, referred to in text, is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to this chapter (§ 2751 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Export Administration Act of 1979, referred to in text, is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to sections 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

CODIFICATION

Section was enacted as part of the International Security and Development Cooperation Act of 1980, and not as part of the Arms Export Control Act which comprises this chapter.

§ 2779. Fees of military sales agents

(a) Adequate and timely reports to Secretary of State; maintenance of records

In accordance with such regulations as he may prescribe, the Secretary of State shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, or offered or agreed to be paid, by any person in connection with—

(1) sales of defense articles or defense services under section 2762 of this title, or of design and construction services under section 2769 of this title; or

(2) commercial sales of defense articles or defense services licensed or approved under section 2778 of this title;

to or for the armed forces of a foreign country or international organization in order to solicit, promote, or otherwise to secure the conclusion of such sales. Such regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments. The Secretary of State

shall by regulation require such recordkeeping as he determines is necessary.

(b) Presidential regulation

The President may, by regulation, prohibit, limit, or prescribe conditions with respect to such contributions, gifts, commissions, and fees as he determines will be in furtherance of the purposes of this chapter.

(c) Allocation to contract; improper influence

No such contribution, gift, commission, or fee may be included, in whole or in part, in the amount paid under any procurement contract entered into under section 2762 or section 2769 of this title, unless the amount thereof is reasonable, allocable to such contract, and not made to a person who has solicited, promoted, or otherwise secured such sale, or has held himself out as being able to do so, through improper influence. For the purposes of this section, ''improper influence'' means influence, direct or indirect, which induces or attempts to induce consideration or action by any employee or officer of a purchasing foreign government or international organization with respect to such purchase on any basis other than such consideration of merit as are involved in comparable United States procurements.

(d) Availability of records to Congress and Federal agencies

(1) All information reported to the Secretary of State and all records maintained by any person pursuant to regulations prescribed under this section shall be available, upon request, to any standing committee of the Congress or any subcommittee thereof and to any agency of the United States Government authorized by law to have access to the books and records of the person required to submit reports or to maintain records under this section.

(2) Access by an agency of the United States Government to records maintained under this section shall be on the same terms and conditions which govern the access by such agency to the books and records of the person concerned.

(Pub. L. 90–629, ch. 3, § 39, as added Pub. L. 94–329, title VI, § 604(b), June 30, 1976, 90 Stat. 767; amended Pub. L. 96–533, title I, § 105(e)(2), Dec. 16, 1980, 94 Stat. 3135.)

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96–533, § 105(e)(2)(A), inserted reference to sales of design and construction services under section 2769 of this title.

Subsec. (c). Pub. L. 96–533, § 105(e)(2)(B), inserted reference to section 2769 of this title.

EFFECTIVE DATE

Section effective 60 days after June 30, 1976, see section 604(c) of Pub. L. 94–329, set out as note under section 2776 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of State, with Secretary of State required to consult with Secretary of Defense to avoid interference in application of Department of Defense regulations to sales made under section 2762 of this title, by section 1(m) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2776, 2778 of this title.

§ 2779a. Prohibition on incentive payments

(a) In general

No United States supplier of defense articles or services sold under this chapter, nor any employee, agent, or subcontractor thereof, shall, with respect to the sale of any such defense article or defense service to a foreign country, make any incentive payments for the purpose of satisfying, in whole or in part, any offset agreement with that country.

(b) Civil penalties

Any person who violates the provisions of this section shall be subject to the imposition of civil penalties as provided for in this section.

(c) Presidential authority

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement and imposition of civil penalties which are conferred upon departments, agencies and officials by subsections (c), (d), (e), and (f) of section 11 of the Export Administration Act of 1979 [50 App. U.S.C. 2410(c), (d), (e), (f)], and section 12(a) of such Act [50 App. U.S.C. 2411(a)], subject to the same terms and conditions as are applicable to such powers under that Act [50 App. U.S.C. 2401 et seq.], except that notwithstanding section 11(c) of that Act [50 App. U.S.C. 2410(c)], the civil penalty for each violation of this section may not exceed $500,000 or five times the amount of the prohibited incentive payment, whichever is greater.

(d) Definitions

For purposes of this section—

(1) the term ''offset agreement'' means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, goods or services produced, manufactured, grown, or extracted, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier;

(2) the term ''incentive payments'' means direct monetary compensation made by a United States supplier of defense articles or defense services or by any employee, agent or subcontractor thereof to any other United States person to induce or persuade that United States person to purchase or acquire goods or services produced, manufactured, grown, or extracted, in whole or in part, in the foreign country which is purchasing those defense articles or services from the United States supplier; and

(3) the term ''United States person'' means—

(A) an individual who is a national or permanent resident alien of the United States; and

(B) any corporation, business association, partnership, trust, or other juridical entity—

(i) organized under the laws of the United States or any State, the District of Columbia, or any territory or possession of the United States; or

(ii) owned or controlled in fact by individuals described in subparagraph (A).

(Pub. L. 90–629, ch. 3, § 39A, as added Pub. L. 103–236, title VII, § 733, Apr. 30, 1994, 108 Stat. 504.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of Title 50, Appendix, and Tables.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title.

§ 2780. Transactions with countries supporting acts of international terrorism

(a) Prohibited transactions by United States Government

The following transactions by the United States Government are prohibited:

(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) of this section under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section). In implementing this paragraph, the United States Government—

(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d) of this section, and

(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

(2) Providing credits, guarantees, or other financial assistance under the authority of this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or any other law (except as provided in subsection (h) of this section), with respect to the acquisition of any munitions item by a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d) of this section. The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

(3) Consenting under section 2753(a) of this title, under section 505(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2314(a)], under the regulations issued to carry out section 2778 of this title, or under any other law (except as provided in subsection (h) of this section), to any transfer of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been transferred to such country.

(4) Providing any license or other approval under section 2778 of this title for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or coproduction agreement) of any munitions item to a country described in subsection (d) of this section. In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d) of this section, except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d) of this section. This paragraph applies with respect to activities undertaken—

(A) by any department, agency, or other instrumentality of the Government,

(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

(b) Prohibited transactions by United States persons

(1) In general

A United States person may not take any of the following actions:

(A) Exporting any munitions item to any country described in subsection (d) of this section.

(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d) of this section.

(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in sub-

section (d) of this section if the United States person has reason to know that the munitions item will be made available to any country described in subsection (d) of this section.

(D) Taking any other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d) of this section, or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

(2) Liability for actions of foreign subsidiaries, etc.

A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

(3) Applicability to actions outside the United States

Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (*l*)(3)(A) or (B) of this section. To the extent provided in regulations issued under subsection (*l*)(3)(D) of this section, paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

(c) Transfers to governments and persons covered

This section applies with respect to—

(1) the acquisition of munitions items by the government of a country described in subsection (d) of this section; and

(2) the acquisition of munitions items by any individual, group, or other person within a country described in subsection (d) of this section, except to the extent that subparagraph (D) of subsection (b)(1) of this section provides otherwise.

(d) Countries covered by prohibition

The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism. For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.

(e) Publication of determinations

Each determination of the Secretary of State under subsection (d) of this section shall be published in the Federal Register.

(f) Rescission

(1) A determination made by the Secretary of State under subsection (d) of this section may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in the leadership and policies of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 45 days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

(2)(A) No rescission under paragraph (1)(B) of a determination under subsection (d) of this section may be made if the Congress, within 45 days after receipt of a report under paragraph (1)(B), enacts a joint resolution the matter after the resolving clause of which is as follows: ''That the proposed rescission of the determination under section 40(d) of the Arms Export Control Act pursuant to the report submitted to the Congress on _____ is hereby prohibited.'', the blank to be completed with the appropriate date.

(B) A joint resolution described in subparagraph (A) and introduced within the appropriate 45-day period shall be considered in the Senate and the House of Representatives in accordance with paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), except that references in such paragraphs to the Committees on Appropriations of the House of Representatives and the Senate shall be deemed to be references to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, respectively.

(g) Waiver

The President may waive the prohibitions contained in this section with respect to a specific transaction if—

(1) the President determines that the transaction is essential to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of

any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is essential to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) Exemption for transactions subject to National Security Act reporting requirements

The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.; relating to congressional oversight of intelligence activities).

(i) Relation to other laws

(1) In general

With regard to munitions items controlled pursuant to this chapter, the provisions of this section shall apply notwithstanding any other provision of law, other than section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)).

(2) Section 614(a) waiver authority

If the authority of section 614(a) of the Foreign Assistance Act of 1961 [22 U.S.C. 2364(a)] is used to permit a transaction under that Act [22 U.S.C. 2151 et seq.] or this chapter which is otherwise prohibited by this section, the written policy justification required by that section shall include the information specified in subsection (g)(2)(B) of this section.

(j) Criminal penalty

Any person who willfully violates this section shall be fined for each violation not more than $1,000,000, imprisoned not more than 10 years, or both.

(k) Civil penalties; enforcement

In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 [50 App. U.S.C. 2410(c), (e), (g), 2411(a)] (subject to the same terms and conditions as are applicable to such powers under that Act [50 App. U.S.C. 2401 et seq.]), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed $500,000.

***(l)* Definitions**

As used in this section—

(1) the term ''munitions item'' means any item enumerated on the United States Munitions list[1] (without regard to whether the item is imported into or exported from the United States);

(2) the term ''United States'', when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States;

(3) the term ''United States person'' means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States,

with respect to that person's actions while outside the United States;

(4) the term ''nuclear explosive device'' has the meaning given that term in section 6305(4) of this title; and

(5) the term ''unsafeguarded special nuclear material'' has the meaning given that term in section 6305(8) of this title.

(Pub. L. 90–629, ch. 3, § 40, as added Pub. L. 99–399, title V, § 509(a), Aug. 27, 1986, 100 Stat. 874; amended Pub. L. 101–222, § 2(a), Dec. 12, 1989, 103 Stat. 1892; Pub. L. 102–138, title III, § 321, Oct. 28, 1991, 105 Stat. 710; Pub. L. 103–236, title VIII, § 822(a)(2), Apr. 30, 1994, 108 Stat. 511.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1), (2) and (i)(2), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 40(d) of the Arms Export Control Act, referred to in subsec. (f)(2)(A), is classified to subsec. (d) of this section.

[1] So in original. Probably should be capitalized.

Paragraphs (3) through (7) of section 8066(c) of the Department of Defense Appropriations Act (as contained in Public Law 98–473), referred to in subsec. (f)(2)(B), is Pub. L. 98–473, title I, § 101(h) [title VIII, § 8066(c)(3)–(7)], Oct. 12, 1984, 98 Stat. 1904, 1936, 1937, which is not classified to the Code.

The National Security Act of 1947, referred to in subsec. (h), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the National Security Act of 1947 is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50.

The Export Administration Act of 1979, referred to in subsec. (k), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–236, § 822(a)(2)(A), inserted at end ''For purposes of this subsection, such acts shall include all activities that the Secretary determines willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups or willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material.''

Subsec. (*l*). Pub. L. 103–236, § 822(a)(2)(B), amended subsec. (*l*) by striking ''and'' after the semicolon in par. (2), substituting a semicolon for the period at the end of par. (3), and adding pars. (4) and (5).

1991—Subsec. (f). Pub. L. 102–138, § 321, designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A) and former subpars. (A) to (C) as cls. (i) to (iii), respectively, redesignated former par. (2) as subpar. (B) and former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2). So much of Pub. L. 102–138, § 321(1), as directed that subpar. (C) of former par. (2) be redesignated cl. (iii) of par. (1)(B), could not be executed because no such subpar. (C) had been enacted.

1989—Pub. L. 101–222 substituted ''Transactions with'' for ''Exports to'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) PROHIBITION.—Except as provided in subsection (b) of this section, items on the United States Munitions List may not be exported to any country which the Secretary of State has determined, for purposes of section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), has repeatedly provided support for acts of international terrorism.

''(b) WAIVER.—The President may waive the prohibition contained in subsection (a) of this section in the case of a particular export if the President determines that the export is important to the national interests of the United States and submits to the Congress a report justifying that determination and describing the proposed export. Any such waiver shall expire at the end of 90 days after it is granted unless the Congress enacts a law extending the waiver.''

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2371, 2656g, 3281 of this title; title 50 sections 2202, 2332.

§ 2781. Transactions with countries not fully cooperating with United States antiterrorism efforts

(a) Prohibited transactions

No defense article or defense service may be sold or licensed for export under this chapter in a fiscal year to a foreign country that the President determines and certifies to Congress, by May 15 of the calendar year in which that fiscal year begins, is not cooperating fully with United States antiterrorism efforts.

(b) Waiver

The President may waive the prohibition set forth in subsection (a) of this section with respect to a specific transaction if the President determines that the transaction is important to the national interests of the United States.

(Pub. L. 90–629, ch. 3, § 40A, as added Pub. L. 104–132, title III, § 330, Apr. 24, 1996, 110 Stat. 1258.)

CODIFICATION

Another section 40A of Pub. L. 90–629 is classified to section 2785 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by section 1(n) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER III–A—END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES

§ 2785. End-use monitoring of defense articles and defense services

(a) Establishment of monitoring program

(1) In general

In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this chapter or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) Requirements of program

To the extent practicable, such program—

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular end-use verification developed under section 2778(g)(7) of this title (commonly referred to as the ''Blue Lantern'' program); and

(B) shall be designed to provide reasonable assurance that—

(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) Conduct of program

In carrying out the program established under subsection (a) of this section, the President shall ensure that the program—

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.

(c) Report to Congress

Not later than 6 months after July 21, 1996, and annually thereafter as a part of the annual congressional presentation documents submitted under section 634 of the Foreign Assistance Act of 1961 [22 U.S.C. 2394], the President shall transmit to the Congress a report describing the actions taken to implement this section, including a detailed accounting of the costs and number of personnel associated with the monitoring program.

(d) Third country transfers

For purposes of this section, defense articles and defense services sold, leased, or exported under this chapter or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) includes defense articles and defense services that are transferred to a third country or other third party.

(Pub. L. 90–629, ch. 3A, § 40A, as added Pub. L. 104–164, title I, § 150(a), July 21, 1996, 110 Stat. 1436.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1) and (d), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

CODIFICATION

Another section 40A of Pub. L. 90–629 is classified to section 2781 of this title.

EFFECTIVE DATE

Section 150(b) of Pub. L. 104–164 provided that: ''Section 40A of the Arms Export Control Act, as added by subsection (a) [22 U.S.C. 2785], applies with respect to defense articles and defense services provided before or after the date of the enactment of this Act [July 21, 1996].''

SUBCHAPTER IV—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

§ 2791. General provisions

(a) Considerations in procurement outside United States

(1) In carrying out this chapter, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this chapter, there shall be taken into consideration (A) the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (B) the portion of the defense articles so manufactured which is of United States origin, and (C) the assessment of the Director of the United States Arms Control and Disarmament Agency as to whether, and the extent to which, such sale might contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(2) Any proposed sale made pursuant to this chapter shall be approved only after consultation with the Director of the United States Arms Control and Disarmament Agency. The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that a sale under this section would be detrimental to the national security of the United States, to recommend to the President that such sale be disapproved.

(b) Information to Congress on credit sales and guaranties

No credit sale shall be extended under section 2763 of this title, and no guarantee shall be issued under section 2764 of this title, in any case involving coproduction or licensed, production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under a license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c) Availability of funds for procurement outside United States

Funds made available under this chapter may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d) Responsibility of Secretary of Defense with respect to sales and guaranties

(1) With respect to sales and guaranties under sections 2761, 2762, 2763, 2764, 2769 and 2770 of this

title, the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e) Revocation and suspension provisions of contracts for sale and export licenses; appropriations for refunds

(1) Each contract for sale entered into under sections 2761, 2762, 2769 and 2770 of this title, and each contract entered into under section 2767(d) of this title, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 2778 of this title shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this chapter.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 2761, 2762, 2769 and 2770 of this title, or under contracts entered into under section 2767(d) of this title, that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f) Use of civilian contract personnel in foreign countries

The President shall, to the maximum extent possible and consistent with the purposes of this chapter, use civilian contract personnel in any foreign country to perform defense services sold under this chapter.

(Pub. L. 90–629, ch. 4, § 42, Oct. 22, 1968, 82 Stat. 1326; Pub. L. 92–226, pt. IV, § 401(e), (f), Feb. 7, 1972, 86 Stat. 33; Pub. L. 94–141, title I, § 150(b), Nov. 29, 1975, 89 Stat. 760; Pub. L. 94–329, title II, § 213, title VI, § 605(b), June 30, 1976, 90 Stat. 745, 768; Pub. L. 96–533, title I, § 105(e)(3), Dec. 16, 1980, 94 Stat. 3135; Pub. L. 97–392, § 2, Dec. 29, 1982, 96 Stat. 1963; Pub. L. 99–83, title I, § 115(b)(3), Aug. 8, 1985, 99 Stat. 201; Pub. L. 99–145, title XI, § 1102(a)(4), (5), Nov. 8, 1985, 99 Stat. 710; Pub. L. 99–661, div. A, title XIII, § 1342(e), Nov. 14, 1986, 100 Stat. 3991; Pub. L. 103–236, title VII, § 714(a)(2), Apr. 30, 1994, 108 Stat. 497.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–236 designated existing provisions as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, amended cl. (C) generally, and added par. (2). Prior to being amended generally, cl. (C) read as follows: ''in coordination with the Director of the United States Arms Control and Disarmament Agency, the Director's opinion as to the extent to which such sale might contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.''

1986—Subsec. (e)(1), (3). Pub. L. 99–661 repealed section 1102(a)(4) of Pub. L. 99–145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

1985—Subsec. (e)(1), (3). Pub. L. 99–83 inserted reference to contracts under section 2767(d) of this title.

Pub. L. 99–145, § 1102(a)(4), which enacted amendments similar to those provided in Pub. L. 99–83, was repealed. See 1986 Amendments note below and former section 1102(a)(5) of Pub. L. 99–145 set out as a Repeals; Effective Date note under section 2752 of this title.

1982—Subsecs. (d)(1), (e)(1), (3)(A). Pub. L. 97–392 substituted ''2769 and 2770'' for ''and 2769''.

1980—Subsecs. (d)(1), (e)(1), (3). Pub. L. 96–533, § 105(e)(3), inserted reference to section 2769 of this title.

1976—Subsec. (e). Pub. L. 94–329, § 213, added subsec. (e).

Subsec. (f). Pub. L. 94–329, § 605(b), added subsec. (f).

1975—Subsec. (a)(3). Pub. L. 94–141 inserted provision relating to coordination with the Director of the United States Arms Control and Disarmament Agency.

1972—Subsec. (a). Pub. L. 92–226, § 401(e), (f)(1), added cl. (3) and inserted '', subject to the provisions of subsection (b) of this section,'' before ''consideration shall also be given'', respectively.

Subsecs. (b) to (d). Pub. L. 92–226, § 401(f)(2), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (c) and (f) of this section delegated to Secretary of Defense, with concurrence of Secretary of State and Secretary of the Treasury required for any determination proposed under subsec. (c) of this section, by section 1(*o*) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2792. Administrative expenses

(a) Availability of funds

Funds made available under other law for the operations of United States Government agencies carrying out functions under this chapter shall be available for the administrative expenses incurred by such agencies under this chapter.

(b) Charges for administrative expenses and official reception and representation expenses

Charges for administrative services calculated under section 2761(e)(1)(A) of this title shall in-

clude recovery of administrative expenses and official reception and representation expenses incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this chapter when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 2761(a) of this title; and

(3) such expenses are neither salaries of the Armed Forces of the United States nor represent unfunded estimated costs of civilian retirement and other benefits.

(c) Limitations on funds used for official reception and representation expenses

Not more than $72,500 of the funds derived from charges for administrative services pursuant to section 2761(e)(1)(A) of this title may be used each fiscal year for official reception and representation expenses.

(Pub. L. 90–629, ch. 4, § 43, Oct. 22, 1968, 82 Stat. 1327; Pub. L. 94–329, title II, § 214, June 30, 1976, 90 Stat. 746; Pub. L. 95–92, § 7(d), Aug. 4, 1977, 91 Stat. 617; Pub. L. 96–92, § 19(b), Oct. 29, 1979, 93 Stat. 709; Pub. L. 97–113, title VII, § 734(a)(10), Dec. 29, 1981, 95 Stat. 1560; Pub. L. 99–83, title I, § 120, Aug. 8, 1985, 99 Stat. 204; Pub. L. 101–165, title IX, § 9104(b)(1), Nov. 21, 1989, 103 Stat. 1152.)

AMENDMENTS

1989—Subsec. (b)(3). Pub. L. 101–165 added par. (3).

1985—Subsec. (b). Pub. L. 99–83, § 120(1), inserted ''and official reception and representation expenses''.

Subsec. (c). Pub. L. 99–83, § 120(2), added subsec. (c).

1981—Subsec. (c). Pub. L. 97–113 struck out subsec. (c) which required a Presidential report to Congress no later than Jan. 15 of each year containing analysis and description of Federal personnel arms export control services performed previous fiscal year. See section 2765(a)(6) of this title.

1979—Subsec. (c). Pub. L. 96–92 added subsec. (c).

1977—Subsec. (b). Pub. L. 95–92 substituted provisions relating to criteria for recovery of charges for administrative expenses calculated under section 2761(e)(1)(A) of this title, for provisions relating to reimbursement from amounts received for sales under sections 2761 and 2762 of this title of administrative expenses incurred by a United States government department or agency in carrying out functions under this chapter for the benefit of any foreign country.

1976—Pub. L. 94–329 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2291c, 2321i, 2761, 2765, 2767, 2795a of this title.

§ 2793. Other provisions unaffected

No provision of this chapter shall be construed as modifying in any way the provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], or section 7307 of title 10.

(Pub. L. 90–629, ch. 4, § 44, Oct. 22, 1968, 82 Stat. 1327.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

SPECIFIC APPLICATION OF OTHER PROVISIONS TO THIS CHAPTER

Except for laws specified in this section, other provisions inapplicable to this chapter without a specific reference thereto or to sales of defense articles and defense services under any Act, see section 45(c) of Pub. L. 90–629, set out as a note under section 2751 of this title.

§ 2794. Definitions

For purposes of this chapter, the term—

(1) ''excess defense article'' has the meaning provided by section 2403(g) of this title;

(2) ''value'' means, in the case of an excess defense article, except as otherwise provided in section 2761(a) of this title,,[1] not less than the greater of—

(A) the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such article, plus the scrap value; or

(B) the market value, if ascertainable;

(3) ''defense article'', except as provided in paragraph (7) of this section, includes—

(A) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war,

(B) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,

(C) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]) source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity), byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

(4) ''defense service'', except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 2403(e) of this title), used for the purposes of making military sales, but does not include design and construction services under section 2769 of this title;

(5) ''training'' includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of

[1] So in original.

the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces;

(6) ''major defense equipment'' means any item of significant military equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000;

(7) ''defense articles and defense services'' means, with respect to commercial exports subject to the provisions of section 2778 of this title, those items designated by the President pursuant to subsection (a)(1) of such section;

(8) ''design and construction services'' means, with respect to sales under section 2769 of this title, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency; and

(9) ''significant military equipment'' means articles—

(A) for which special export controls are warranted because of the capacity of such articles for substantial military utility or capability; and

(B) identified on the United States Munitions List.

(Pub. L. 90–629, ch. 4, § 47, as added Pub. L. 93–189, § 25(12), Dec. 17, 1973, 87 Stat. 731; amended Pub. L. 94–329, title II, § 215, June 30, 1976, 90 Stat. 746; Pub. L. 96–92, § 22, Oct. 29, 1979, 93 Stat. 710; Pub. L. 96–533, title I, § 105(f), Dec. 16, 1980, 94 Stat. 3135; Pub. L. 99–83, title I, § 107(b), title XII, § 1211(b)(3), Aug. 8, 1985, 99 Stat. 197, 279; Pub. L. 104–164, title I, § 144, July 21, 1996, 110 Stat. 1434.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, as amended, referred to in par. (3), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

1996—Par. (9). Pub. L. 104–164 added par. (9).

1985—Par. (2). Pub. L. 99–83, § 107(b), inserted ‘‘, except as otherwise provided in section 2761(a) of this title,’’.

Par. (6). Pub. L. 99–83, § 1211(b)(3), substituted ‘‘military'' for ‘‘combat''.

1980—Par. (4). Pub. L. 96–533, § 105(f)(1), excluded from term ‘‘defense service'' design and construction services under section 2769 of this title.

Par. (8). Pub. L. 96–533, § 105(f)(2)–(4), added par. (8).

1979—Par. (3). Pub. L. 96–92 defined ‘‘defense article'' to include uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity.

1976—Pars. (3) to (7). Pub. L. 94–329 added pars. (3) to (7).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2321j, 2753, 2761, 2770 of this title; title 10 sections 2350i, 2540d; title 12 section 635.

SUBCHAPTER V—SPECIAL DEFENSE ACQUISITION FUND

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2291c of this title; title 10 section 114.

§ 2795. Fund

(a) Establishment; purposes; special requirements and responsibilities; continuous orders for certain articles and services; articles for narcotics control purposes

(1) Under the direction of the President and in consultation with the Secretary of State, the Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this subchapter referred to as the ‘‘Fund''), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this subchapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

(2) Nothing in this subchapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.].

(3) The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or other law.

(4) The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b) Collections in Fund

The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 2761(a)(1)(A)

of this title representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.]) of defense articles and defense services acquired under this subchapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 2761(a)(1) of this title or section 2762 of this title or section 644(m) of the Foreign Assistance Act of 1961 [22 U.S.C. 2403(m)], as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c) Amounts

(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10. For purposes of this limitation, the size of the Fund is the amounts in the Fund plus the value (in terms of acquisition cost) of the defense articles acquired under this subchapter which have not been transferred from the Fund in accordance with this subchapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 90–629, ch. 5, § 51, as added Pub. L. 97–113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1522; amended Pub. L. 99–83, title I, § 121, Aug. 8, 1985, 99 Stat. 204; Pub. L. 99–139, § 1(a), Oct. 30, 1985, 99 Stat. 562; Pub. L. 99–433, title I, § 110(h)(1), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 101–231, § 4, Dec. 13, 1989, 103 Stat. 1957; Pub. L. 104–164, title I, § 145(b), July 21, 1996, 110 Stat. 1434.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a) and (b)(3), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104–164 redesignated subpar. (A) as entire par. (4) and struck out subpar. (B) which read as follows: ''Each report pursuant to section 2795b(a) of this title shall designate the defense articles that have been acquired or are to be acquired pursuant to this paragraph and the defense articles acquired under this subchapter that were transferred for use in narcotics control purposes.''

1989—Subsec. (a)(4). Pub. L. 101–231 added par. (4).

1986—Subsec. (c)(1). Pub. L. 99–433 substituted ''section 114(c)'' for ''section 138(g)''.

1985—Subsec. (a)(3). Pub. L. 99–83, § 121(a), added par. (3).

Subsec. (b). Pub. L. 99–139 amended subsec. (b) generally, so as to read similar to how it read prior to the amendment by Pub. L. 99–83.

Pub. L. 99–83 amended subsec. (b) to read as follows: ''The Fund shall consist of collections from sales made under letters of offer, or transfers made under the Foreign Assistance Act of 1961, of defense articles and defense services acquired under this subchapter (representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 2761(a)(1) of this title or section 2762 of this title or section 644(m) of the Foreign Assistance Act of 1961, as appropriate), together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.''

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 1(b) of Pub. L. 99–139 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1985.''

Amendment by Pub. L. 99–83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99–83, set out as a note under section 2151–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 114.

§ 2795a. Use and transfer of items procured by Fund

(a) Authorization

No defense article or defense service acquired by the Secretary of Defense under this subchapter may be transferred to any foreign country or international organization unless such transfer is authorized by this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or other law.

(b) Temporary use

The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this subchapter prior to their transfer to a foreign country or international organization, if such is necessary to meet national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Storage, maintenance and other costs

Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this subchapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 2792(b) of this title.

(Pub. L. 90–629, ch. 5, § 52, as added Pub. L. 97–113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1523.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Defense by section 1(p) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2795b. Repealed. Pub. L. 104–164, title I, § 145(a), July 21, 1996, 110 Stat. 1434

Section, Pub. L. 90–629, ch. 5, § 53, as added Pub. L. 97–113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1524; amended Pub. L. 99–433, title I, § 110(h)(2), Oct. 1, 1986, 100 Stat. 1004, directed President to submit annual report to Congress on acquisitions of defense articles and services under this subchapter and required report to include estimate of likely procurements to be made through Special Defense Acquisition Fund.

SUBCHAPTER VI—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2291c of this title; title 10 section 7307.

§ 2796. Leasing authority

(a) Preconditions

The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

(1) he determines that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than on a sales basis under this chapter;

(2) he determines that the articles are not for the time needed for public use;

(3) the President first considers the effects of the lease of the articles on the national technology and industrial base, particularly the extent, if any, to which the lease reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the articles are leased; and

(4) the country or international organization has agreed to pay in United States dollars all costs incurred by the United States Government in leasing such articles, including reimbursement for depreciation of such articles while leased, the costs of restoration or replacement if the articles are damaged while leased, and, if the articles are lost or destroyed while leased—

(A) in the event the United States intends to replace the articles lost or destroyed, the replacement cost (less any depreciation in the value) of the articles; or

(B) in the event the United States does not intend to replace the articles lost or destroyed, an amount not less than the actual value (less any depreciation in the value) specified in the lease agreement.

The requirement of paragraph (4) shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects. The President may waive the requirement of paragraph (4) for reimbursement of depreciation for any defense article which has passed three-quarters of its normal service life if the President determines that to do so is important to the national security interest of the United States. The President may waive the requirement of paragraph (4) with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense, except that this waiver authority—

(A) may be exercised only if the President submits to the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate, in accordance with the regular notification procedures of those Committees, a detailed notification for each lease with respect to which the authority is exercised; and

(B) may be exercised only during the fiscal year 1998 and only with respect to one country, unless the Congress hereafter provides otherwise.

The preceding sentence does not constitute authorization of appropriations for payments by the United States for leased articles.

(b) Duration; termination

Each lease agreement under this section shall be for a fixed duration of not to exceed five years and shall provide that, at any time during the duration of the lease, the President may terminate the lease and require the immediate return of the leased articles.

(c) Applicable statutory authorities

Defense articles in the stocks of the Department of Defense may be leased or loaned to a foreign country or international organization only under the authority of this subchapter or chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], and may not be leased to a foreign country or international organization under the authority of section 2667 of title 10.

(Pub. L. 90–629, ch. 6, § 61, as added Pub. L. 97–113, title I, § 109(a), Dec. 29, 1981, 95 Stat. 1524; amended Pub. L. 99–500, § 147, Oct. 18, 1986, 100 Stat. 1783–351, and Pub. L. 99–591, § 147, Oct. 30, 1986, 100 Stat. 3341–354; Pub. L. 100–202, § 101(e) [title V, § 556], Dec. 22, 1987, 101 Stat. 1329–131, 1329–170; Pub. L. 100–461, title V, § 552, Oct. 1, 1988, 102 Stat. 2268–35; Pub. L. 101–167, title V, § 550, Nov. 21, 1989, 103 Stat. 1235; Pub. L. 101–513, title V, § 546, Nov. 5, 1990, 104 Stat. 2019; Pub. L. 102–145, § 118, as added Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 93; Pub. L. 102–391, title V, § 544, Oct. 6, 1992, 106 Stat. 1672; Pub. L. 103–87, title V, § 524, Sept. 30, 1993, 107 Stat. 952; Pub. L. 103–236, title VII, § 731(e), Apr. 30, 1994, 108 Stat. 503; Pub. L. 103–306, title V, § 524, Aug. 23, 1994, 108 Stat. 1632; Pub. L. 104–107, title V, § 524, Feb. 12, 1996, 110 Stat. 729; Pub. L. 104–164, title I, §§ 146, 153(a), July 21, 1996, 110 Stat. 1434, 1440; Pub. L. 104–208, div. A, title I, § 101(c) [title V, § 524], Sept. 30, 1996, 110 Stat. 3009–121, 3009–149; Pub. L. 105–118, title V, § 524, Nov. 26, 1997, 111 Stat. 2412.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (c), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§ 2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

CODIFICATION

Amendment by Pub. L. 102–145 is based on section 545 of H.R. 2621, One Hundred Second Congress, 1st Session, as passed by the House of Representatives on June 19, 1991, which was enacted into law by Pub. L. 102–145, § 118, as added by Pub. L. 102–266, § 102, Apr. 1, 1992, 106 Stat. 93. Section 118 of Pub. L. 102–145 provided that the authority and conditions provided in such section 545 shall be applicable to funds appropriated by Pub. L. 102–145 (and are hereby enacted) in lieu of the authority and conditions provided in section 546 of Pub. L. 101–513. See 1990, 1991, and 1992 Amendment notes below.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–118 substituted ''1998'' for ''1997'' in par. (B).

1996—Subsec. (a). Pub. L. 104–164, § 153(a), struck out '', or to any defense article which has passed three-quarters of its normal service life.'' after ''electronics interface projects'' in second sentence and inserted after second sentence ''The President may waive the requirement of paragraph (4) for reimbursement of depreciation for any defense article which has passed three-quarters of its normal service life if the President determines that to do so is important to the national security interest of the United States.''

Pub. L. 104–208 substituted ''1997'' for ''1996'' in par. (B).

Pub. L. 104–107 substituted ''1996'' for ''1995'' in par. (B).

Subsec. (a)(4). Pub. L. 104–164, § 146, substituted ''and, if the articles are lost or destroyed while leased—

''(A) in the event the United States intends to replace the articles lost or destroyed, the replacement cost (less any depreciation in the value) of the articles; or

''(B) in the event the United States does not intend to replace the articles lost or destroyed, an amount not less than the actual value (less any depreciation in the value) specified in the lease agreement'' for ''and the replacement cost (less any depreciation in the value) of the articles if the articles are lost or destroyed while leased''.

1994—Subsec. (a). Pub. L. 103–306 substituted ''1995'' for ''1994'' in par. (B).

Pub. L. 103–236 struck out ''and'' at end of par. (2), added par. (3), redesignated former par. (3) as (4), and substituted ''paragraph (4)'' for ''paragraph (3)'' in two places in provisions following par. (4).

1993—Subsec. (a). Pub. L. 103–87 substituted ''1994'' for ''1993'' in par. (B).

1992—Subsec. (a). Pub. L. 102–391 substituted ''1993'' for ''1992'' in par. (B).

Pub. L. 102–266 added Pub. L. 102–145, § 118. See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–145, § 118, as added by Pub. L. 102–266, substituted ''1992'' for ''1991'' in par. (B). See Codification note above.

1990—Subsec. (a). Pub. L. 101–513 substituted ''1991'' for ''1990'' in par. (B).

1989—Subsec. (a). Pub. L. 101–167 substituted ''1990'' for ''1989'' in par. (B).

1988—Subsec. (a). Pub. L. 100–461 substituted ''1989'' for ''1988'' in par. (B).

1987—Subsec. (a). Pub. L. 100–202 substituted ''1988'' for ''1987'' in par. (B).

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591 inserted provision authorizing the President to waive the requirements of par. (3) with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense and providing exceptions to such waiver authority.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 153(b) of Pub. L. 104–164 provided that: ''The third sentence of section 61(a) of the Arms Export Control Act, as added by subsection (a)(2) [22 U.S.C. 2796(a)], shall apply only with respect to a defense article leased on or after the date of the enactment of this Act [July 21, 1996].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(q) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2291c of this title.

§ 2796a. Reports to Congress

(a) Written certification to Speaker of the House and chairmen of Congressional committees

Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this subchapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—

(1) the country or international organization to which the defense article is to be leased or loaned;

(2) the type, quantity, and value (in terms of replacement cost) of the defense article to be leased or loaned;

(3) the terms and duration of the lease or loan; and

(4) a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold under this chapter.

(b) Waiver; determination of emergency

The President may waive the requirements of this section (and in the case of an agreement described in section 2796b of this title, may waive the provisions of that section) if he states in his certification, that an emergency exists which requires that the lease or loan be entered into immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.

(c) Transmission of certification

The certification required by subsection (a) of this section shall be transmitted—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic

Treaty Organization, any member country of that Organization or Australia, Japan, or New Zealand; and

(2) not less than 30 calendar days before the agreement is entered into or renewed in the case of an agreement with any other organization or country.

(Pub. L. 90–629, ch. 6, § 62, as added Pub. L. 97–113, title I, § 109(a), Dec. 29, 1981, 95 Stat. 1525; amended Pub. L. 104–164, title I, § 141(e)(1), July 21, 1996, 110 Stat. 1432.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§ 2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–164, § 141(e)(1)(A), substituted ''Before'' for ''Not less than 30 days before''.

Subsec. (b). Pub. L. 104–164, § 141(e)(1)(B), substituted ''states in his certification'' for ''determines, and immediately reports to the Congress'' and inserted at end ''If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.''

Subsec. (c). Pub. L. 104–164, § 141(e)(1)(C), added subsec. (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–164 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 141(f) of Pub. L. 104–164, set out as a note under section 2753 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense by section 1(q) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2796b of this title.

§ 2796b. Legislative review procedures

(a) Applicability

In the case of any agreement involving the lease under this subchapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its replacement cost less any depreciation in its value) at $14,000,000 or more, or (ii) defense articles valued (in terms of their replacement cost less any depreciation in their value) at $50,000,000 or more, the agreement may not be entered into or renewed if the Congress, within the 15-day or 30-day period specified in section 2796a(c)(1) or (2) of this title, as the case may be, enacts a joint resolution prohibiting the proposed lease or loan.

(b) Consideration of resolution

Any joint resolution under subsection (a) of this section shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(c) Highly privileged nature of resolution

For the purpose of expediting the consideration and enactment of joint resolutions under subsection (a) of this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

(Pub. L. 90–629, ch. 6, § 63, as added Pub. L. 97–113, title I, § 109(a), Dec. 29, 1981, 95 Stat. 1525; amended Pub. L. 99–247, § 1(d), Feb. 12, 1986, 100 Stat. 9; Pub. L. 104–164, title I, § 141(e)(2), July 21, 1996, 110 Stat. 1433.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§ 2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (b), is section 601(b) of Pub. L. 94–329, June 30, 1976, 90 Stat. 765, which made provision for expedited procedures in the Senate, and was not classified to the Code.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–164 redesignated par. (1) as entire subsec. (a), substituted ''the 15-day or 30-day period specified in section 2796a(c)(1) or (2) of this title, as the case may be'' for ''30 calendar days after receiving the certification with respect to that proposed agreement pursuant to section 2796a(a) of this title'', and struck out par. (2) which read as follows: ''This section shall not apply with respect to a loan or lease to the North Atlantic Treaty Organization, any member country of that Organization, Japan, Australia, or New Zealand.''

1986—Subsec. (a)(1). Pub. L. 99–247, § 1(d)(1), substituted ''enacts a joint resolution prohibiting'' for ''adopts a concurrent resolution stating that it objects to''.

Subsec. (b). Pub. L. 99–247, § 1(d)(2), inserted ''joint'' before ''resolution''.

Subsec. (c). Pub. L. 99–247, § 1(d)(3), substituted ''enactment of joint resolutions'' for ''adoption of concurrent resolutions'' and ''such joint resolution'' for ''such resolution''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–164 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 141(f) of Pub. L. 104–164, set out as a note under section 2753 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2796a of this title.

§ 2796c. Applicability of other statutory provisions

Any reference to sales of defense articles under this chapter in any provision of law restricting the countries or organizations to which such sales may be made shall be deemed to include a reference to leases of defense articles under this subchapter.

(Pub. L. 90–629, ch. 6, § 64, as added Pub. L. 97–113, title I, § 109(a), Dec. 29, 1981, 95 Stat. 1526.)

§ 2796d. Loan of materials, supplies, and equipment for research and development purposes

(a) Loan or gift transactions; written agreement; covered programs

(1) Except as provided in subsection (c) of this section, the Secretary of Defense may loan to a country that is a NATO or major non-NATO ally materials, supplies, or equipment for the purpose of carrying out a program of cooperative research, development, testing, or evaluation. The Secretary may accept as a loan or a gift from a country that is a NATO or major non-NATO ally materials, supplies, or equipment for such purpose.

(2) Each loan or gift transaction entered into by the Secretary under this section shall be provided for under the terms of a written agreement between the Secretary and the country concerned.

(3) A program of testing or evaluation for which the Secretary may loan materials, supplies, or equipment under this section includes a program of testing or evaluation conducted solely for the purpose of standardization, interchangeability, or technical evaluation if the country to which the materials, supplies, or equipment are loaned agrees to provide the results of the testing or evaluation to the United States without charge.

(b) Reimbursement of consumed materials, etc.

The materials, supplies, or equipment loaned to a country under this section may be expended or otherwise consumed in connection with any testing or evaluation program without a requirement for reimbursement of the United States if the Secretary—

(1) determines that the success of the research, development, test, or evaluation depends upon expending or otherwise consuming the materials, supplies, or equipment loaned to the country; and

(2) approves of the expenditure or consumption of such materials, supplies, or equipment.

(c) Prohibitions

The Secretary of Defense may not loan to a country under this section any material if the material is a strategic and critical material and if, at the time the loan is to be made, the quantity of the material in the National Defense Stockpile (provided for under section 98b of title 50) is less than the quantity of such material to be stockpiled, as determined by the President under section 98b(a) of title 50.

(d) "NATO ally" defined

For purposes of this section, the term ''NATO ally'' means a member country of the North Atlantic Treaty Organization (other than the United States).

(Pub. L. 90–629, ch. 6, § 65, as added Pub. L. 100–456, div. A, title X, § 1003(a), Sept. 29, 1988, 102 Stat. 2038; amended Pub. L. 102–25, title VII, § 705(d)(2), Apr. 6, 1991, 105 Stat. 120; Pub. L. 104–164, title I, § 147(a)(3)(B), July 21, 1996, 110 Stat. 1435.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–164 struck out ''or major non-NATO'' after ''NATO'' and ''or a foreign country other than a member nation of NATO designated as a major non-NATO ally under section 2350a(i)(3) of title 10'' after ''(other than the United States)''.

1991—Subsec. (d). Pub. L. 102–25 substituted ''section 2350a(i)(3) of title 10'' for ''section 2767a of this title''.

SUBCHAPTER VII—CONTROL OF MISSILES AND MISSILE EQUIPMENT OR TECHNOLOGY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 50 App. section 2410b.

§ 2797. Licensing

(a) Establishment of list of controlled items

The Secretary of State, in consultation with the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the heads of other appropriate departments and agencies, shall establish and maintain, as part of the United States Munitions List, a list of all items on the MTCR Annex the export of which is not controlled under section 2405(*l*) of title 50, Appendix.

(b) Referral of license applications

(1) A determination of the Secretary of State to approve a license for the export of an item on the list established under subsection (a) of this section may be made only after the license application is referred to the Secretary of Defense and the Director of the United States Arms Control and Disarmament Agency.

(2) Within 10 days after a license is issued for the export of an item on the list established under subsection (a) of this section, the Secretary of State shall provide to the Secretary of Defense, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency the license application and accompanying documents issued to the applicant, to the extent that the relevant Secretary or the Director indicates the need to receive such application and documents.

(c) Information sharing

The Secretary of State shall establish a procedure for sharing information with appropriate officials of the intelligence community, as determined by the Director of Central Intelligence, with the Director of the United States Arms Control and Disarmament Agency, and with other appropriate Government agencies, that will ensure effective monitoring of transfers of MTCR equipment or technology and other missile technology.

(d) Exports to space launch vehicle programs

Within 15 days after the issuance of a license for the export of items valued at less than

$14,000,000 that are controlled under this chapter pursuant to United States obligations under the Missile Technology Control Regime and intended to support the design, development, or production of a space launch vehicle system listed in Category I of the MTCR Annex, the Secretary shall transmit to the Congress a report describing the licensed export and rationale for approving such export, including the consistency of such export with United States missile nonproliferation policy. The requirement contained in the preceding sentence shall not apply to licenses for exports to countries that were members of the MTCR as of April 17, 1987.

(Pub. L. 90–629, ch. 7, § 71, as added Pub. L. 101–510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1745; amended Pub. L. 103–236, title VII, §§ 714(a)(3)–(6), 735(c), Apr. 30, 1994, 108 Stat. 497, 506.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–236, § 714(a)(3), inserted ‘‘, the Director of the Arms Control and Disarmament Agency,’’ after ‘‘the Secretary of Defense’’.

Subsec. (b)(1). Pub. L. 103–236, § 714(a)(4), inserted ‘‘and the Director of the United States Arms Control and Disarmament Agency’’ after ‘‘Secretary of Defense’’.

Subsec. (b)(2). Pub. L. 103–236, § 714(a)(5), substituted ‘‘, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency’’ for ‘‘and the Secretary of Commerce’’ and inserted ‘‘or the Director’’ after ‘‘relevant Secretary’’.

Subsec. (c). Pub. L. 103–236, § 714(a)(6), inserted ‘‘with the Director of the United States Arms Control and Disarmament Agency,’’ after ‘‘Director of Central Intelligence,’’.

Subsec. (d). Pub. L. 103–236, § 735(c), added subsec. (d).

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, June 25, 1991, 56 F.R. 31041, which provided for delegation of certain functions of the President, was superseded by Ex. Ord. No. 12851, § 7, June 11, 1993, 58 F.R. 33181, set out below.

REPORT ON MISSILE PROLIFERATION

Section 1704 of Pub. L. 101–510 directed President to submit to Congress reports on international transfers of aircraft which the Secretary had reason to believe may be intended to be used for delivery of nuclear, biological, or chemical weapons and international transfers of MTCR equipment or technology to any country seeking to acquire such equipment or technology, and which provided for contents of reports, countries excluded from such reports, classification of information, and definitions, prior to repeal by Pub. L. 102–190, div. A, title X, § 1097(g), Dec. 5, 1991, 105 Stat. 1491. See section 1097 of Pub. L. 102–190, set out as a note under section 2751 of this title.

EX. ORD. NO. 12851. ADMINISTRATION OF PROLIFERATION SANCTIONS, MIDDLE EAST ARMS CONTROL, AND RELATED CONGRESSIONAL REPORTING RESPONSIBILITIES

Ex. Ord. No. 12851, June 11, 1993, 58 F.R. 33181, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code; sections 1701–1703 of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 (50 U.S.C. App. 2402 note, 2405, 2410b; 22 U.S.C. 2797–2797c); sections 303, 324 [105 Stat. 708, 711], and 401–405 [22 U.S.C. 2778 note] of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, Public Law 102–138; sections 305–308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Public Law 102–182 (50 U.S.C. App. 2410c; 22 U.S.C. 2798, 5604–5606); sections 241 [105 Stat. 1326] and 1097 [22 U.S.C. 2751 note] of the National Defense Authorization Act for Fiscal Years 1992 and 1993, Public Law 102–190; and section 1364 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102–484 [106 Stat. 2561], I hereby order as follows:

SECTION 1. *Chemical and Biological Weapons Proliferation and Use Sanctions*. (a) *Chemical and Biological Weapons Proliferation*. The authority and duties vested in me by section 81 of the Arms Export Control Act, as amended (‘‘AECA’’) (22 U.S.C. 2798), and section 11C of the Export Administration Act of 1979, as amended (‘‘EAA’’) (50 U.S.C. App. 2410c), are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to deny certain United States Government contracts, as provided in section 81(c)(1)(A) of the AECA and section 11C(c)(1)(A) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, as well as the authority and duties vested in me to make the determinations provided for in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA are delegated to the Secretary of Defense. The Secretary of Defense shall notify the Secretary of the Treasury of determinations made pursuant to section 81(c)(2) of the AECA and section 11(c)(2) [11C(c)(2)] of the EAA.

(2) The authority and duties vested in me to prohibit certain imports as provided in section 81(c)(1)(B) of the AECA and section 11C(c)(1)(B) of the EAA, pursuant to a determination made by the Secretary of State under section 81(a)(1) of the AECA or section 11C(a)(1) of the EAA, and the obligation to implement the exceptions provided in section 81(c)(2) of the AECA and section 11C(c)(2) of the EAA, insofar as the exceptions affect imports of goods into the United States, are delegated to the Secretary of the Treasury.

(b) *Chemical and Biological Weapons Use*. The authority and duties vested in me by sections 306–308 of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604–5606) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me to restrict certain imports as provided in section 307(b)(2)(D) [22 U.S.C. 5605(b)(2)(D)], pursuant to a determination made by the Secretary of State under section 307(b)(1), are delegated to the Secretary of the Treasury.

(2) The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 307(d)(1)(A)(ii).

(3) The authority and duties vested in me to prohibit certain exports as provided in section 307(a)(5) and section 307(b)(2)(C), pursuant to a determination made by the Secretary of State under section 306(a)(1) and section 307(b)(1), are delegated to the Secretary of Commerce.

(c) *Coordination Among Agencies*. The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise the prohibition authority delegated hereby.

SEC. 2. *Missile Proliferation Sanctions*. (a) *Arms Export Control Act*. The authority and duties vested in me by sections 72–73 of the AECA (22 U.S.C. 2797a–2797b) are delegated to the Secretary of State, except that:

(1) The authority and duties vested in me by section 72(a)(1) to make determinations with respect to violations by United States persons of the EAA [50 App. U.S.C. 2401 et seq.] are delegated to the Secretary of Commerce.

(2) The authority and duties vested in me to deny certain United States Government contracts as provided

in sections 73(a)(2)(A)(i) and 73(a)(2)(B)(i), pursuant to a determination made by the Secretary of State under section 73(a)(1), as well as the authority and duties vested in me to make the findings provided in sections 72(c), 73(f), and 73(g)(1), are delegated to the Secretary of Defense. The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, any waivers based upon findings made pursuant to sections 72(c) and 73(f).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 73(a)(2)(C), pursuant to a determination made by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 73(g), are delegated to the Secretary of the Treasury.

(b) *Export Administration Act*. The authority and duties vested in me by section 11B of the EAA (50 U.S.C. App. 2410b) are delegated to the Secretary of Commerce, except that:

(1) The authority and duties vested in me by sections 11B(a)(1)(A) (insofar as such section authorizes determinations with respect to violations by United States persons of the AECA [22 U.S.C. 2751 et seq.]), 11B(b)(1) (insofar as such section authorizes determinations regarding activities by foreign persons), and 11B(b)(5) are delegated to the Secretary of State.

(2) The authority and duties vested in me to make the findings provided in sections 11B(a)(3), 11B(b)(6), and 11B(b)(7)(A) are delegated to the Secretary of Defense. The Secretary of Commerce shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(a)(3). The Secretary of State shall issue, transmit to the Congress, and notify the Secretary of the Treasury of, as appropriate, waivers based upon findings made pursuant to section 11B(b)(6).

(3) The authority and duties vested in me to prohibit certain imports as provided in section 11B(b)(1), pursuant to a determination by the Secretary of State under that section, and the obligation to implement the exceptions provided in section 11B(b)(7), are delegated to the Secretary of the Treasury.

(c) *Reporting Requirements*. The authority and duties vested in me to make certain reports to the Congress as provided in section 1097 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 [22 U.S.C. 2751 note] and section 1364 of the National Defense Authorization Act for Fiscal Year 1993 [Pub. L. 102–484, 106 Stat. 2561] are delegated to the Secretary of State.

(d) *Coordination Among Agencies*. The Secretaries designated in this section shall exercise all functions delegated to them by this section in consultation with the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Arms Control and Disarmament Agency, and other departments and agencies as appropriate, utilizing the appropriate interagency groups prior to any determination to exercise prohibition authority delegated hereby.

SEC. 3. *Arms Control in the Middle East*. The certification and reporting functions vested in me by sections 403 and 404 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 [22 U.S.C. 2778 note], are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

SEC. 4. *China and Weapons Proliferation*. The reporting functions regarding China and weapons proliferation vested in me by sections 303(a)(2) and 324 of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993 [Pub. L. 102–138, 105 Stat. 709, 711], are delegated to the Secretary of State. The Secretary of State shall exercise these functions in consultation with the Secretary of Defense and other agencies as appropriate.

SEC. 5. *Arrow Tactical Anti-Missile Program*. The authority and duties vested in me to make certain certifications as provided by section 241(b)(3)(C) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 [Pub. L. 102–190, 105 Stat. 1327] are delegated to the Secretary of State.

SEC. 6. *Delegations*. The functions delegated herein may be redelegated as appropriate. Regulations necessary to carry out the functions delegated herein may be issued as appropriate.

SEC. 7. *Priority*. This order supercedes the Memorandum of the President, ''Delegation of Authority Regarding Missile Technology Proliferation,'' June 25, 1991. To the extent that this order is inconsistent with any provisions of any prior Executive order or Presidential memorandum, this order shall control.

WILLIAM J. CLINTON.

§ 2797a. Denial of transfer of missile equipment or technology by United States persons

(a) Sanctions

(1) If the President determines that a United States person knowingly—

(A) exports, transfers, or otherwise engages in the trade of any item on the MTCR Annex, in violation of the provisions of section 2778 of this title, section 2404 or 2405 of title 50, Appendix, or any regulations or orders issued under any such provisions,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

then the President shall impose the applicable sanctions described in paragraph (2).

(2) The sanctions which apply to a United States person under paragraph (1) are the following:

(A) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category II of the MTCR Annex, then the President shall deny to such United States person for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer of missile equipment or technology controlled under this chapter.

(B) If the item on the MTCR Annex involved in the export, transfer, or trade is missile equipment or technology within category I of the MTCR, then the President shall deny to such United States person for a period of not less than 2 years—

(i) all United States Government contracts, and

(ii) all export licenses and agreements for items on the United States Munitions List.

(b) Discretionary sanctions

In the case of any determination made pursuant to subsection (a) of this section, the President may pursue any penalty provided in section 2778(c) of this title.

(c) Presumption

In determining whether to apply sanctions under subsection (a) of this section to a United States person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has deter-

mined, for purposes of 2405(j)(1)(A)[1] of title 50, Appendix, has repeatedly provided support for acts of international terrorism.

(d) Waiver

The President may waive the imposition of sanctions under subsection (a) of this section with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(Pub. L. 90–629, ch. 7, § 72, as added Pub. L. 101–510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1745; amended Pub. L. 103–236, title VII, § 734(a), Apr. 30, 1994, 108 Stat. 505.)

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103–236 added subsec. (c) and redesignated former subsec. (c) as (d).

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, § 2(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

§ 2797b. Transfers of missile equipment or technology by foreign persons

(a) Sanctions

(1) Subject to subsections (c) through (g)[1] of this section, if the President determines that a foreign person, after November 5, 1990, knowingly—

(A) exports, transfers, or otherwise engages in the trade of any MTCR equipment or technology that contributes to the acquisition, design, development, or production of missiles in a country that is not an MTCR adherent and would be, if it were United States-origin equipment or technology, subject to the jurisdiction of the United States under this chapter,

(B) conspires to or attempts to engage in such export, transfer, or trade, or

(C) facilitates such export, transfer, or trade by any other person,

or if the President has made a determination with respect to a foreign person under section 2410b(b)(1) of title 50, Appendix, then the President shall impose on that foreign person the applicable sanctions under paragraph (2).

(2) The sanctions which apply to a foreign person under paragraph (1) are the following:

(A) If the item involved in the export, transfer, or trade is within category II of the MTCR Annex, then the President shall deny, for a period of 2 years—

(i) United States Government contracts relating to missile equipment or technology; and

(ii) licenses for the transfer to such foreign person of missile equipment or technology controlled under this chapter.

(B) If the item involved in the export, transfer, or trade is within category I of the MTCR Annex, then the President shall deny, for a period of not less than 2 years—

(i) all United States Government contracts with such foreign person; and

(ii) licenses for the transfer to such foreign person of all items on the United States Munitions List.

(C) If, in addition to actions taken under subparagraphs (A) and (B), the President determines that the export, transfer, or trade has substantially contributed to the design, development, or production of missiles in a country that is not an MTCR adherent, then the President shall prohibit, for a period of not less than 2 years, the importation into the United States of products produced by that foreign person.

(b) Inapplicability with respect to MTCR adherents

Subsection (a) of this section does not apply with respect to—

(1) any export, transfer, or trading activity that is authorized by the laws of an MTCR adherent, if such authorization is not obtained by misrepresentation or fraud; or

(2) any export, transfer, or trade of an item to an end user in a country that is an MTCR adherent.

(c) Effect of enforcement actions by MTCR adherents

Sanctions set forth in subsection (a) of this section may not be imposed under this section on a person with respect to acts described in such subsection or, if such sanctions are in effect against a person on account of such acts, such sanctions shall be terminated, if an MTCR adherent is taking judicial or other enforcement action against that person with respect to such acts, or that person has been found by the government of an MTCR adherent to be innocent of wrongdoing with respect to such acts.

(d) Advisory opinions

The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency, may, upon the request of any person, issue an advisory opinion to that person as to whether a proposed activity by that person would subject that person to sanctions under this section. Any person who relies in good faith on such an advisory opinion which states that the proposed activity would not subject a person to such sanctions, and any person who thereafter engages in such activity, may not be made subject to such sanctions on account of such activity.

(e) Waiver and report to Congress

(1) In any case other than one in which an advisory opinion has been issued under subsection (d) of this section stating that a proposed activity would not subject a person to sanctions under this section, the President may waive the

[1] So in original. Probably should be preceded by "section".

[1] See References in Text note below.

application of subsection (a) of this section to a foreign person if the President determines that such waiver is essential to the national security of the United States.

(2) In the event that the President decides to apply the waiver described in paragraph (1), the President shall so notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives not less than 45 working days before issuing the waiver. Such notification shall include a report fully articulating the rationale and circumstances which led the President to apply the waiver.

(f) Presumption

In determining whether to apply sanctions under subsection (a) of this section to a foreign person involved in the export, transfer, or trade of an item on the MTCR Annex, it should be a rebuttable presumption that such item is designed for use in a missile listed in the MTCR Annex if the President determines that the final destination of the item is a country the government of which the Secretary of State has determined, for purposes of 2405(j)(1)(A)[2] of title 50, Appendix, has repeatedly provided support for acts of international terrorism.

(g) Additional waiver

The President may waive the imposition of sanctions under paragraph (1) on a person with respect to a product or service if the President certifies to the Congress that—

(1) the product or service is essential to the national security of the United States; and

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments.

(h) Exceptions

The President shall not apply the sanction under this section prohibiting the importation of the products of a foreign person—

(1) in the case of procurement of defense articles or defense services—

(A) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy requirements essential to the national security of the United States;

(B) if the President determines that the person to which the sanctions would be applied is a sole source supplier of the defense articles and services, that the defense articles or services are essential to the national security of the United States, and that alternative sources are not readily or reasonably available; or

(C) if the President determines that such articles or services are essential to the national security of the United States under defense coproduction agreements or NATO Programs of Cooperation;

(2) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose the sanctions; or

(3) to—

(A) spare parts,

(B) component parts, but not finished products, essential to United States products or production,

(C) routine services and maintenance of products, to the extent that alternative sources are not readily or reasonably available, or

(D) information and technology essential to United States products or production.

(Pub. L. 90–629, ch. 7, § 73, as added Pub. L. 101–510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1746; amended Pub. L. 102–138, title III, § 323(a), Oct. 28, 1991, 105 Stat. 711; Pub. L. 103–236, title VII, §§ 714(a)(7), 734(b), Apr. 30, 1994, 108 Stat. 497, 505; Pub. L. 104–106, div. A, title XIV, § 1408(d), Feb. 10, 1996, 110 Stat. 494.)

REFERENCES IN TEXT

Subsections (f) and (g) of this section, referred to in subsec. (a)(1), were redesignated subsecs. (g) and (h), respectively, by Pub. L. 103–236, title VII, § 734(b)(1), Apr. 30, 1994, 108 Stat. 505.

AMENDMENTS

1996—Subsec. (e)(2). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives'' for ''the Congress'' and ''45 working days'' for ''20 working days''.

1994—Subsec. (d). Pub. L. 103–236, § 714(a)(7), substituted '', the Secretary of Commerce, and the Director of the United States Arms Control and Disarmament Agency,'' for ''and the Secretary of Commerce,''.

Subsecs. (f) to (h). Pub. L. 103–236, § 734(b), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

1991—Subsec. (a)(1)(A). Pub. L. 102–138 inserted ''acquisition,'' before ''design,''.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, § 2(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2375 of this title; title 50 App. section 2410b.

§ 2797b–1. Notification of admittance of MTCR adherents

Following any action by the United States that results in a country becoming a MTCR adherent, the President shall transmit promptly to the Congress a report which describes the rationale for such action, together with an assessment of that country's nonproliferation policies, practices, and commitments. Such report shall also include the text of any agreements or understandings between the United States and such country regarding the terms and conditions of the country's adherence to the MTCR.

(Pub. L. 90–629, ch. 7, § 73A, as added Pub. L. 103–236, title VII, § 735(d), Apr. 30, 1994, 108 Stat. 506.)

[2] So in original. Probably should be preceded by ''section''.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State by Memorandum of President of the United States, July 26, 1994, 59 F.R. 40205, set out as a note under section 2370a of this title.

§ 2797c. Definitions

For purposes of this subchapter—

(1) the term ''missile'' means a category I system as defined in the MTCR Annex, and any other unmanned delivery system of similar capability, as well as the specially designed production facilities for these systems;

(2) the term ''Missile Technology Control Regime'' or ''MTCR'' means the policy statement, between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(3) the term ''MTCR adherent'' means a country that participates in the MTCR or that, pursuant to an international understanding to which the United States is a party, controls MTCR equipment or technology in accordance with the criteria and standards set forth in the MTCR;

(4) the term ''MTCR Annex'' means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(5) the terms ''missile equipment or technology'' and ''MTCR equipment or technology'' mean those items listed in category I or category II of the MTCR Annex;

(6) the term ''United States person'' has the meaning given that term in section 2415(2) of title 50, Appendix;

(7) the term ''foreign person'' means any person other than a United States person;

(8)(A) the term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity; and

(B) in the case of countries with non-market economies (excluding former members of the Warsaw Pact), the term ''person'' means—

(i) all activities of that government relating to the development or production of any missile equipment or technology; and

(ii) all activities of that government affecting the development or production of electronics, space systems or equipment, and military aircraft; and

(9) the term ''otherwise engaged in the trade of'' means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(Pub. L. 90–629, ch. 7, § 74, as added Pub. L. 101–510, div. A, title XVII, § 1703, Nov. 5, 1990, 104 Stat. 1748; amended Pub. L. 102–138, title III, § 323(b), (c), Oct. 28, 1991, 105 Stat. 711.)

AMENDMENTS

1991—Par. (8)(B). Pub. L. 102–138, § 323(b), substituted ''countries with non-market economies (excluding former members of the Warsaw Pact)'' for ''countries where it may be impossible to identify a specific governmental entity referred to in subparagraph (A)''.

Par. (8)(B)(ii). Pub. L. 102–138, § 323(c), substituted ''electronics, space systems or equipment, and military aircraft'' for ''aircraft, electronics, and space systems or equipment''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2776 of this title.

SUBCHAPTER VIII—CHEMICAL OR BIOLOGICAL WEAPONS PROLIFERATION

§ 2798. Sanctions against certain foreign persons

(a) Imposition of sanctions

(1) Determination by the President

Except as provided in subsection (b)(2) of this section, the President shall impose both of the sanctions described in subsection (c) of this section if the President determines that a foreign person, on or after October 28, 1991, has knowingly and materially contributed—

(A) through the export from the United States of any goods or technology that are subject to the jurisdiction of the United States,

(B) through the export from any other country of any goods or technology that would be, if they were United States goods or technology, subject to the jurisdiction of the United States, or

(C) through any other transaction not subject to sanctions pursuant to the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.],

to the efforts by any foreign country, project, or entity described in paragraph (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) Countries, projects, or entities receiving assistance

Paragraph (1) applies in the case of—

(A) any foreign country that the President determines has, at any time after January 1, 1980—

(i) used chemical or biological weapons in violation of international law;

(ii) used lethal chemical or biological weapons against its own nationals; or

(iii) made substantial preparations to engage in the activities described in clause (i) or (ii);

(B) any foreign country whose government is determined for purposes of section 6(j) of the Export Administration Act of 1979 [50 App. U.S.C. 2405(j)] to be a government that has repeatedly provided support for acts of international terrorism; or

(C) any other foreign country, project, or entity designated by the President for purposes of this section.

(3) Persons against whom sanctions are to be imposed

Sanctions shall be imposed pursuant to paragraph (1) on—

(A) the foreign person with respect to which the President makes the determination described in that paragraph;

(B) any successor entity to that foreign person;

(C) any foreign person that is a parent or subsidiary of that foreign person if that parent or subsidiary knowingly assisted in the activities which were the basis of that determination; and

(D) any foreign person that is an affiliate of that foreign person if that affiliate knowingly assisted in the activities which were the basis of that determination and if that affiliate is controlled in fact by that foreign person.

(b) Consultations with and actions by foreign government of jurisdiction

(1) Consultations

If the President makes the determinations described in subsection (a)(1) of this section with respect to a foreign person, the Congress urges the President to initiate consultations immediately with the government with primary jurisdiction over that foreign person with respect to the imposition of sanctions pursuant to this section.

(2) Actions by government of jurisdiction

In order to pursue such consultations with that government, the President may delay imposition of sanctions pursuant to this section for a period of up to 90 days. Following these consultations, the President shall impose sanctions unless the President determines and certifies to the Congress that that government has taken specific and effective actions, including appropriate penalties, to terminate the involvement of the foreign person in the activities described in subsection (a)(1) of this section. The President may delay imposition of sanctions for an additional period of up to 90 days if the President determines and certifies to the Congress that that government is in the process of taking the actions described in the preceding sentence.

(3) Report to Congress

The President shall report to the Congress, not later than 90 days after making a determination under subsection (a)(1) of this section, on the status of consultations with the appropriate government under this subsection, and the basis for any determination under paragraph (2) of this subsection that such government has taken specific corrective actions.

(c) Sanctions

(1) Description of sanctions

The sanctions to be imposed pursuant to subsection (a)(1) of this section are, except as provided in paragraph (2) of this subsection, the following:

(A) Procurement sanction

The United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3) of this section.

(B) Import sanctions

The importation into the United States of products produced by any person described in subsection (a)(3) of this section shall be prohibited.

(2) Exceptions

The President shall not be required to apply or maintain sanctions under this section—

(A) in the case of procurement of defense articles or defense services—

(i) under existing contracts or subcontracts, including the exercise of options for production quantities to satisfy United States operational military requirements;

(ii) if the President determines that the person or other entity to which the sanctions would otherwise be applied is a sole source supplier of the defense articles or services, that the defense articles or services are essential, and that alternative sources are not readily or reasonably available; or

(iii) if the President determines that such articles or services are essential to the national security under defense coproduction agreements;

(B) to products or services provided under contracts entered into before the date on which the President publishes his intention to impose sanctions;

(C) to—

(i) spare parts,

(ii) component parts, but not finished products, essential to United States products or production, or

(iii) routine servicing and maintenance of products, to the extent that alternative sources are not readily or reasonably available;

(D) to information and technology essential to United States products or production; or

(E) to medical or other humanitarian items.

(d) Termination of sanctions

The sanctions imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of sanctions and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a)(1) of this section has ceased to aid or abet any foreign government, project, or entity in its efforts to acquire chemical or biological weapons capability as described in that subsection.

(e) Waiver

(1) Criterion for waiver

The President may waive the application of any sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which that sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) Notification of and report to Congress

If the President decides to exercise the waiver authority provided in paragraph (1), the

President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(f) "Foreign person" defined

For the purposes of this section, the term ''foreign person'' means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

(Pub. L. 90–629, ch. 8, § 81, as added and amended Pub. L. 102–182, title III, §§ 305(b), 309(b)(2), Dec. 4, 1991, 105 Stat. 1250, 1258.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a)(1)(C), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

PRIOR PROVISIONS

A prior subchapter VIII, consisting of former section 2798, as added by Pub. L. 102–138, title V, § 505(b), Oct. 28, 1991, 105 Stat. 727, was substantially identical to subchapter VIII, as added by section 305(b) of Pub. L. 102–182, prior to repeal by Pub. L. 102–182, title III, § 309(a), Dec. 4, 1991, 105 Stat. 1258.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 101–182, § 309(b)(2), substituted ''October 28, 1991'' for reference to the ''date of the enactment of this section'' which was enacted Dec. 4, 1991.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, see Ex. Ord. No. 12851, § 1(a), June 11, 1993, 58 F.R. 33181, set out as a note under section 2797 of this title.

SUBCHAPTER IX—TRANSFER OF CERTAIN CFE TREATY-LIMITED EQUIPMENT TO NATO MEMBERS

§ 2799. Purpose

The purpose of this subchapter is to authorize the President to support, consistent with the CFE Treaty, a NATO equipment transfer program that will—

(1) enhance NATO's forces,

(2) increase NATO standardization and interoperability, and

(3) better distribute defense burdens within the NATO alliance.

(Pub. L. 90–629, ch. 9, § 91, as added Pub. L. 102–228, § 2, Dec. 12, 1991, 105 Stat. 1691.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2799c of this title.

§ 2799a. CFE Treaty obligations

The authorities provided in this subchapter shall be exercised consistent with the obligations incurred by the United States in connection with the CFE Treaty.

(Pub. L. 90–629, ch. 9, § 92, as added Pub. L. 102–228, § 2, Dec. 12, 1991, 105 Stat. 1691.)

§ 2799b. Authorities

(a) General authority

The President may transfer to any NATO/CFE country, in accordance with NATO plans, defense articles—

(1) that are battle tanks, armoured combat vehicles, or artillery included within the CFE Treaty's definition of ''conventional armaments and equipment limited by the Treaty'';

(2) that were, as of the date of signature of the CFE Treaty, in the stocks of the Department of Defense and located in the CFE Treaty's area of application; and

(3) that the President determines are not needed by United States military forces within the CFE Treaty's area of application.

(b) Acceptance of NATO assistance in eliminating direct costs of transfers

In order to eliminate direct costs of facilitating transfers of defense articles under subsection (a) of this section, the United States may utilize services provided by NATO or any NATO/CFE country, including inspection, repair, or transportation services with respect to defense articles so transferred.

(c) Acceptance of NATO assistance in meeting certain United States obligations

In order to facilitate United States compliance with the CFE Treaty-mandated obligations for destruction of conventional armaments and equipment limited by the CFE Treaty, the United States may utilize services or funds provided by NATO or any NATO/CFE country.

(d) Authority to transfer on grant basis

Defense articles may be transferred under subsection (a) of this section without cost to the recipient country.

(e) Third country transfers restrictions

For purposes of sections 2753(a)(2), 2753(a)(3), 2753(c), and 2753(d) of this title, defense articles transferred under subsection (a) of this section shall be deemed to have been sold under this chapter.

(f) Maintenance of military balance in Eastern Mediterranean

The President shall ensure that transfers by the United States under subsection (a) of this section, taken together with transfers by other NATO/CFE countries in implementing the CFE Treaty, are of such valuations so as to be consistent with the United States policy, embodied in section 2373 of this title, of maintaining the military balance in the Eastern Mediterranean.

(g) Expiration of authority

(1) In general

Except as provided in paragraph (2), the authority of subsection (a) of this section expires at the end of the 40-month period beginning on the date on which the CFE Treaty enters into force.

(2) Transition rule

Paragraph (1) does not apply with respect to a transfer of defense articles for which notifi-

cation under section 2799c(a) of this title is submitted before the end of the period described in that paragraph.

(Pub. L. 90–629, ch. 9, § 93, as added Pub. L. 102–228, § 2, Dec. 12, 1991, 105 Stat. 1691.)

DELEGATION OF FUNCTIONS

Memorandum of President of the United States, Feb. 13, 1992, 57 F.R. 6663, provided:

Memorandum for the Secretary of State and the Secretary of Defense

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Defense the functions vested in me by section 93(a) and section 94 of the Arms Export Control Act, as amended (the ''Act'') [22 U.S.C. 2799b(a), 2799c], and to the Secretary of State the functions vested in me by section 93(f) of the Act. Consistent with section 2 of the Act [22 U.S.C. 2752], transfers of defense articles under section 93(a) shall be subject to the policy direction of the Secretary of State, including the determination of whether such transfers shall occur.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2799c of this title.

§ 2799c. Notifications and reports to Congress

(a) Notifications

Not less than 15 days before transferring any defense articles pursuant to section 2799b(a) of this title, the President shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate in accordance with the procedures applicable to reprogramming notifications pursuant to section 2394–1 of this title.

(b) Annual reports

Not later than February 1 each year, the President shall submit to the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives and the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report that—

(1) lists all transfers made to each recipient NATO/CFE country by the United States under section 2799b(a) of this title during the preceding calendar year;

(2) describes how those transfers further the purposes described in paragraphs (1) through (3) of section 2799 of this title; and

(3) lists, on a country-by-country basis, all transfers to another country of conventional armaments and equipment limited by the CFE Treaty—

(A) by each NATO/CFE country (other than the United States) in implementing the CFE Treaty, and

(B) by each country of the Eastern Group of States Parties in implementing the CFE Treaty.

(Pub. L. 90–629, ch. 9, § 94, as added Pub. L. 102–228, § 2, Dec. 12, 1991, 105 Stat. 1692; amended Pub. L. 103–199, title IV, § 402(1), Dec. 17, 1993, 107 Stat. 2324.)

AMENDMENTS

1993—Subsec. (b)(3)(B). Pub. L. 103–199 substituted ''country of the Eastern Group of States Parties'' for ''Warsaw Pact country''.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives and Committee on Armed Services of House of Representatives treated as referring to Committee on National Security of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by Memorandum of President of the United States, Feb. 13, 1992, 57 F.R. 6663, set out as a note under section 2799b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2799b of this title.

§ 2799d. Definitions

As used in this subchapter—

(1) the term ''CFE Treaty'' means the Treaty on Conventional Armed Forces in Europe (signed at Paris, November 19, 1990);

(2) the term ''conventional armaments and equipment limited by the CFE Treaty'' has the same meaning as the term ''conventional armaments and equipment limited by the Treaty'' does under paragraph 1(J) of article II of the CFE Treaty;

(3) the term ''NATO'' means the North Atlantic Treaty Organization;

(4) the term ''NATO/CFE country'' means a member country of NATO that is a party to the CFE Treaty and is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed or acceded to the Treaty of Brussels of 1948 or the Treaty of Washington of 1949 (the North Atlantic Treaty); and

(5) the term ''country of the Eastern Group of States Parties'' means a country that is listed in paragraph 1(A) of article II of the CFE Treaty within the group of States Parties that signed the Treaty of Warsaw of 1955 or a successor state to such a country.

(Pub. L. 90–629, ch. 9, § 95, as added Pub. L. 102–228, § 2, Dec. 12, 1991, 105 Stat. 1693; amended Pub. L. 103–199, title IV, § 402(2), Dec. 17, 1993, 107 Stat. 2324.)

AMENDMENTS

1993—Par. (5). Pub. L. 103–199 substituted ''country of the Eastern Group of States Parties'' for ''Warsaw Pact country'' and inserted before period at end ''or a successor state to such a country''.

SUBCHAPTER X—NUCLEAR NONPROLIFERATION CONTROLS

§ 2799aa. Nuclear enrichment transfers

(a) Prohibitions; safeguards and management

Except as provided in subsection (b) of this section, no funds made available to carry out the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] or this chapter may be used for the pur-

pose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2346 et seq.]), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act [22 U.S.C. 2348 et seq.], or extending military credits or making guarantees, to any country which the President determines delivers nuclear enrichment equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977, unless before such delivery—

(1) the supplying country and receiving country have reached agreement to place all such equipment, materials, or technology, upon delivery, under multilateral auspices and management when available; and

(2) the recipient country has entered into an agreement with the International Atomic Energy Agency to place all such equipment, materials, technology, and all nuclear fuel and facilities in such country under the safeguards system of such Agency.

(b) Certification by President of necessity of continued assistance; disapproval by Congress

(1) Notwithstanding subsection (a) of this section, the President may furnish assistance which would otherwise be prohibited under such subsection if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that—

(A) the termination of such assistance would have a serious adverse effect on vital United States interests; and

(B) he has received reliable assurances that the country in question will not acquire or develop nuclear weapons or assist other nations in doing so.

Such certification shall set forth the reasons supporting such determination in each particular case.

(2)(A) A certification under paragraph (1) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within thirty calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(Pub. L. 90–629, ch. 10, § 101, as added Pub. L. 103–236, title VIII, § 826(a), Apr. 30, 1994, 108 Stat. 515.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. Chapters 4 and 6 of part II of the Act are classified generally to parts IV (§ 2346 et seq.) and VI (§ 2348 et seq.), respectively, of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (b)(2)(B), is section 601(b) of Pub. L. 94–329, title VI, June 30, 1976, 90 Stat. 765, which is not classified to the Code.

REFERENCES TO SECTIONS 2429 AND 2429a OF THIS TITLE DEEMED TO BE REFERENCES TO SECTIONS 2799aa AND 2799aa–1 OF THIS TITLE

Section 826(c) of Pub. L. 103–236 provided that: ''Any reference in law as of the date of enactment of this Act [Apr. 30, 1994] to section 669 or 670 of the Foreign Assistance Act of 1961 [former 22 U.S.C. 2429, 2429a] shall, after such date, be deemed to be a reference to section 101 or 102, as the case may be, of the Arms Export Control Act [22 U.S.C. 2799aa, 2799aa–1].''

EFFECTIVE DATE

Subchapter effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as a note under section 6301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2295a, 2295b, 2375 of this title.

§ 2799aa–1. Nuclear reprocessing transfers, illegal exports for nuclear explosive devices, transfers of nuclear explosive devices, and nuclear detonations

(a) Prohibitions on assistance to countries involved in transfer of nuclear reprocessing equipment, materials, or technology; exceptions; procedures applicable

(1) Except as provided in paragraph (2) of this subsection, no funds made available to carry out the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.] or this chapter may be used for the purpose of providing economic assistance (including assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2346 et seq.]), providing military assistance or grant military education and training, providing assistance under chapter 6 of part II of that Act [22 U.S.C. 2348 et seq.], or extending military credits or making guarantees, to any country which the President determines—

(A) delivers nuclear reprocessing equipment, materials, or technology to any other country on or after August 4, 1977, or receives such equipment, materials, or technology from any other country on or after August 4, 1977 (except for the transfer of reprocessing technology associated with the investigation, under international evaluation programs in which the United States participates, of technologies which are alternatives to pure plutonium reprocessing), or

(B) is a non-nuclear-weapon state which, on or after August 8, 1985, exports illegally (or attempts to export illegally) from the United States any material, equipment, or technology which would contribute significantly to the ability of such country to manufacture a nuclear explosive device, if the President determines that the material, equipment, or technology was to be used by such country in the manufacture of a nuclear explosive device.

For purposes of clause (B), an export (or attempted export) by a person who is an agent of, or is otherwise acting on behalf of or in the interests of, a country shall be considered to be an export (or attempted export) by that country.

(2) Notwithstanding paragraph (1) of this subsection, the President in any fiscal year may furnish assistance which would otherwise be prohibited under that paragraph if he determines and certifies in writing during that fiscal year to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the termination of such assistance would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(3)(A) A certification under paragraph (2) of this subsection shall take effect on the date on which the certification is received by the Congress. However, if, within 30 calendar days after receiving this certification, the Congress enacts a joint resolution stating in substance that the Congress disapproves the furnishing of assistance pursuant to the certification, then upon the enactment of that resolution the certification shall cease to be effective and all deliveries of assistance furnished under the authority of that certification shall be suspended immediately.

(B) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(b) Prohibitions on assistance to countries involved in transfer or use of nuclear explosive devices; exceptions; procedures applicable

(1) Except as provided in paragraphs (4), (5), and (6), in the event that the President determines that any country, after the effective date of part B of the Nuclear Proliferation Prevention Act of 1994—

(A) transfers to a non-nuclear-weapon state a nuclear explosive device,

(B) is a non-nuclear-weapon state and either—

(i) receives a nuclear explosive device, or

(ii) detonates a nuclear explosive device,

(C) transfers to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by the transferring country to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(D) is a non-nuclear-weapon state and seeks and receives any design information or component which is determined by the President to be important to, and intended by the recipient state for use in, the development or manufacture of any nuclear explosive device,

then the President shall forthwith report in writing his determination to the Congress and shall forthwith impose the sanctions described in paragraph (2) against that country.

(2) The sanctions referred to in paragraph (1) are as follows:

(A) The United States Government shall terminate assistance to that country under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], except for humanitarian assistance or food or other agricultural commodities.

(B) The United States Government shall terminate—

(i) sales to that country under this chapter of any defense articles, defense services, or design and construction services, and

(ii) licenses for the export to that country of any item on the United States Munitions List.

(C) The United States Government shall terminate all foreign military financing for that country under this chapter.

(D) The United States Government shall deny to that country any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, except that the sanction of this subparagraph shall not apply—

(i) to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 [50 U.S.C. 413 et seq.] (relating to congressional oversight of intelligence activities), or

(ii) to humanitarian assistance.

(E) The United States Government shall oppose, in accordance with section 262d of this title, the extension of any loan or financial or technical assistance to that country by any international financial institution.

(F) The United States Government shall prohibit any United States bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities.

(G) The authorities of section 2405 of title 50, Appendix, shall be used to prohibit exports to that country of specific goods and technology (excluding food and other agricultural commodities), except that such prohibition shall not apply to any transaction subject to the reporting requirements of title V of the National Security Act of 1947 [50 U.S.C. 413 et seq.] (relating to congressional oversight of intelligence activities).

(3) As used in this subsection—

(A) the term ''design information'' means specific information that relates to the design of a nuclear explosive device and that is not available to the public; and

(B) the term ''component'' means a specific component of a nuclear explosive device.

(4)(A) Notwithstanding paragraph (1) of this subsection, the President may, for a period of not more than 30 days of continuous session, delay the imposition of sanctions which would otherwise be required under paragraph (1)(A) or (1)(B) of this subsection if the President first transmits to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, a certification that he has determined that an immediate imposition of sanctions on that country would be detrimental to the national security of

the United States. Not more than one such certification may be transmitted for a country with respect to the same detonation, transfer, or receipt of a nuclear explosive device.

(B) If the President transmits a certification to the Congress under subparagraph (A), a joint resolution which would permit the President to exercise the waiver authority of paragraph (5) of this subsection shall, if introduced in either House within thirty days of continuous session after the Congress receives this certification, be considered in the Senate in accordance with subparagraph (C) of this paragraph.

(C) Any joint resolution under this paragraph shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(D) For purposes of this paragraph, the term ''joint resolution'' means a joint resolution the matter after the resolving clause of which is as follows: ''That the Congress having received on ____ a certification by the President under section 102(b)(4) of the Arms Export Control Act with respect to ____, the Congress hereby authorizes the President to exercise the waiver authority contained in section 102(b)(5) of that Act.'', with the date of receipt of the certification inserted in the first blank and the name of the country inserted in the second blank.

(5) Notwithstanding paragraph (1) of this subsection, if the Congress enacts a joint resolution under paragraph (4) of this subsection, the President may waive any sanction which would otherwise be required under paragraph (1)(A) or (1)(B) if he determines and certifies in writing to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate that the imposition of such sanction would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(6)(A) In the event the President is required to impose sanctions against a country under paragraph (1)(C) or (1)(D), the President shall forthwith so inform such country and shall impose the required sanctions beginning 30 days after submitting to the Congress the report required by paragraph (1) unless, and to the extent that, there is enacted during the 30-day period a law prohibiting the imposition of such sanctions.

(B) Notwithstanding any other provision of law, the sanctions which are required to be imposed against a country under paragraph (1)(C) or (1)(D) shall not apply if the President determines and certifies in writing to the Committee on Foreign Relations and the Committee on Governmental Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives that the application of such sanctions against such country would have a serious adverse effect on vital United States interests. The President shall transmit with such certification a statement setting forth the specific reasons therefor.

(7) For purposes of this subsection, continuity of session is broken only by an adjournment of Congress sine die and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(8) The President may not delegate or transfer his power, authority, or discretion to make or modify determinations under this subsection.

(c) "Non-nuclear-weapon state" defined

As used in this section, the term ''non-nuclear-weapon state'' means any country which is not a nuclear-weapon state, as defined in Article IX(3) of the Treaty on the Non-Proliferation of Nuclear Weapons.

(Pub. L. 90–629, ch. 10, § 102, as added Pub. L. 103–236, title VIII, § 826(a), Apr. 30, 1994, 108 Stat. 516.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1) and (b)(2)(A), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. Chapters 4 and 6 of part II of the Act are classified generally to parts IV (§ 2346 et seq.) and VI (§ 2348 et seq.), respectively, of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsecs. (a)(3)(B) and (b)(4)(C), is section 601(b) of Pub. L. 94–329, title VI, June 30, 1976, 90 Stat. 765, which is not classified to the Code.

For effective date of part B of the Nuclear Proliferation Prevention Act of 1994 [part B of title VIII of Pub. L. 103–236], referred to in subsec. (b)(1), as 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103–236, set out as an Effective Date note under section 6301 of this title.

The National Security Act of 1947, as amended, referred to in subsec. (b)(2)(D)(i), (G), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

Section 102 of the Arms Export Control Act, referred to in subsec. (b)(4)(D), is classified to this section.

CHANGE OF NAME

Committee on Foreign Affairs of House of Representatives treated as referring to Committee on International Relations of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2295a, 2295b, 3281 of this title.

§ 2799aa–2. "Nuclear explosive device" defined

As used in this subchapter, the term ''nuclear explosive device'' has the meaning given that term in section 6305(4) of this title.

(Pub. L. 90–629, ch. 10, § 103, as added Pub. L. 103–236, title VIII, § 826(a), Apr. 30, 1994, 108 Stat. 519.)

CHAPTER 40—INTERNATIONAL EXPOSITIONS

Sec.
2801. Congressional findings.
2802. Federal recognition.
(a) Eligibility requirements.