

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.

#### CODIFICATION

Subsec. (j)(2) of this section, which required the President to submit to certain committees of Congress an annual report specifying countries eligible, and criteria used to determine eligibility, for participation in cooperative project agreements under subsec. (j)(1) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 39 of House Document No. 103-7.

#### 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 L. 99-661, §1342(e), repealed section 1102(a)(1) of Pub.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.

#### 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 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.

#### ASSESSMENT OF RISK ASSOCIATED WITH DEVELOPMENT OF MAJOR WEAPON SYSTEMS TO BE PROCURED UNDER COOPERATIVE PROJECTS WITH FRIENDLY FOREIGN COUNTRIES

Pub. L. 112-81, div. A, title VIII, §836, Dec. 31, 2011, 125 Stat. 1508, provided that:

“(a) ASSESSMENT OF RISK REQUIRED.—

“(1) IN GENERAL.—Not later than two days after the President transmits a certification to Congress pursuant to section 27(f) of the Arms Export Control Act (22 U.S.C. 2767(f)) regarding a proposed cooperative project agreement that is expected to result in the award of a Department of Defense contract for the engineering and manufacturing development of a major weapon system, the Secretary of Defense shall submit to the Chairmen of the Committees on Armed Services of the Senate and the House of Representatives a report setting forth a risk assessment of the proposed cooperative project.

“(2) PREPARATION.—The Secretary shall prepare each report required by paragraph (1) in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Assistant Secretary of Defense for Research and Engineering, and the Director of Cost Assessment and Program Evaluation of the Department of Defense.

“(b) ELEMENTS.—The risk assessment on a cooperative project under subsection (a) shall include the following:

“(1) An assessment of the design, technical, manufacturing, and integration risks associated with developing and procuring the weapon system to be procured under the cooperative project.

“(2) A statement identifying any termination liability that would be incurred under the development contract to be entered into under subsection (a)(1), and a statement of the extent to which such termination liability would not be fully funded by appropriations available or sought in the fiscal year in which the agreement for the cooperative project is signed on behalf of the United States.

“(3) An assessment of the advisability of incurring any unfunded termination liability identified under paragraph (2) given the risks identified in the assessment under paragraph (1).

“(4) A listing of which, if any, requirements associated with the oversight and management of a major defense acquisition program (as prescribed under Department of Defense Instruction 5000.02 or related authorities) will be waived, or in any way modified, in carrying out the development contract to be entered into under [subsection] (a)(1), and a full explanation why such requirements need to be waived or modified.

“(c) DEFINITIONS.—In this section:

“(1) The term ‘engineering and manufacturing development’ has the meaning given that term in Department of Defense Instruction 5000.02.

“(2) The term ‘major weapon system’ has the meaning given that term in section 2379(f) of title 10, United States Code.”

#### § 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.

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

**§ 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 li-

cense 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 subchapter: *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.

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