

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 and the numbers, range, and findings of end-use monitoring of United States transfers of small arms and light weapons.

(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; amended Pub. L. 107-228, div. B, title XII, §1205(b), Sept. 30, 2002, 116 Stat. 1428.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (d), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

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.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-228 inserted “and the numbers, range, and findings of end-use monitoring of United States transfers of small arms and light weapons” before period at end.

EFFECTIVE DATE

Pub. L. 104-164, title I, §150(b), July 21, 1996, 110 Stat. 1437, 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].”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State insofar as they relate to commercial exports licensed under this chapter, and to Secretary of Defense insofar as they relate to defense articles and defense services sold, leased, or transferred under the Foreign Military Sales Program, 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 IV—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

§ 2791. General provisions

(a) Considerations in procurement outside United States

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) 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.

(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; Pub. L. 105-277, div. G, subdiv. A, title XII, §1225(a)(3), Oct. 21, 1998, 112 Stat. 2681-773.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277 struck out par. (1) designation, struck out “the assessment of the Director of the United States Arms Control and Disarmament Agency as to” after “, and (C)”, and struck out par. (2) which read as follows: “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.”

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 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 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 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(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.

§ 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 include 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 \$86,500 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; Pub. L. 107-228, div. B, title XII, § 1203, Sept. 30, 2002, 116 Stat. 1427.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-228 substituted “\$86,500” for “\$72,500”.

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.

§ 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

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Atomic Energy Act of 1954, as amended, referred to in text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and 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—

¹ So in original.