

any foreign country and set forth exceptions to such requirement, for provisions authorizing deductions of expenditures from military assistance appropriations during the period beginning July 1, 1976, and ending Sept. 30, 1977, under section 2312 of this title where under this section reimbursement is requested by the expending government agency or if the available funds are deposited in the Treasury as miscellaneous receipts.

Subsec. (b). Pub. L. 95-92 substituted provisions relating to assignment of military personnel to specified countries by President for implementation of management responsibilities during fiscal year 1978 under international security assistance programs, for provisions requiring specific Congressional authority for assignment of any military assistance advisory group, etc., to operate in any foreign country after Sept. 30, 1977, and provisions relating to assignment by the President of military personnel to diplomatic missions of the United States.

Subsec. (c). Pub. L. 95-92 substituted provisions relating to assignment of military personnel to nonspecified countries by President for performance of accounting and other management functions under international security assistance programs, for provisions limiting after Sept. 30, 1976, the number of military missions and groups to not more than 34.

Subsec. (d). Pub. L. 95-92 substituted provisions setting forth maximum number of military personnel assignable under subsecs. (b) and (c) of this section for fiscal year 1978 as 865, for provisions defining "military assistance advisory group, military mission, or other organization of United States military personnel performing similar military advisory functions under this chapter".

Subsecs. (e) to (g). Pub. L. 95-92 added subsecs. (e) to (g).

1976—Subsec. (a). Pub. L. 94-329, §104(1), designated existing provisions as subsec. (a) and substituted "During the period beginning July 1, 1976, and ending September 30, 1977" for "Effective July 1, 1976".

Subsecs. (b) to (d). Pub. L. 94-329, §104(2), added subsecs. (b) to (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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

§ 2321j. Authority to transfer excess defense articles

(a) Authorization

The President is authorized to transfer excess defense articles under this section to countries for which receipt of such articles was justified pursuant to the annual congressional presentation documents for military assistance programs, or for programs under part VIII of subchapter I of this chapter, submitted under section 2394 of this title, or for which receipt of

such articles was separately justified to the Congress, for the fiscal year in which the transfer is authorized.

(b) Limitations on transfers

(1) The President may transfer excess defense articles under this section only if—

(A) such articles are drawn from existing stocks of the Department of Defense;

(B) funds available to the Department of Defense for the procurement of defense equipment are not expended in connection with the transfer;

(C) the transfer of such articles will not have an adverse impact on the military readiness of the United States;

(D) with respect to a proposed transfer of such articles on a grant basis, such a transfer is preferable to a transfer on a sales basis, after taking into account the potential proceeds from, and likelihood of, such sales, and the comparative foreign policy benefits that may accrue to the United States as the result of a transfer on either a grant or sales basis;

(E) the President determines that the transfer 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; and

(F) the transfer of such articles is consistent with the policy framework for the Eastern Mediterranean established under section 2373 of this title.

(2) Accordingly, for the four-year period beginning on October 1, 1996, and thereafter for the four-period¹ beginning on October 1, 2000, the President shall ensure that excess defense articles offered to Greece and Turkey under this section will be made available consistent with the manner in which the President made available such excess defense articles during the four-year period that began on October 1, 1992, pursuant to section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990.

(c) Terms of transfers

(1) No cost to recipient country

Excess defense articles may be transferred under this section without cost to the recipient country.

(2) Priority

Notwithstanding any other provision of law, the delivery of excess defense articles under this section to member countries of the North Atlantic Treaty Organization (NATO) on the southern and southeastern flank of NATO, to major non-NATO allies on such southern and southeastern flank, and to the Philippines shall be given priority to the maximum extent feasible over the delivery of such excess defense articles to other countries.

(d) Waiver of requirement for reimbursement of Department of Defense expenses

Section 2392(d) of this title shall not apply with respect to transfers of excess defense arti-

¹ So in original. Probably should be "four-year period".

cles (including transportation and related costs) under this section.

(e) Transportation and related costs

(1) In general

Except as provided in paragraph (2), funds available to the Department of Defense may not be expended for crating, packing, handling, and transportation of excess defense articles transferred under the authority of this section.

(2) Exception

The President may provide for the transportation of excess defense articles without charge to a country for the costs of such transportation if—

(A) it is determined that it is in the national interest of the United States to do so;

(B) the recipient is a developing country receiving less than \$10,000,000 of assistance under part V of this subchapter (relating to international military education and training) or section 23 of the Arms Export Control Act (22 U.S.C. 2763; relating to the Foreign Military Financing program) in the fiscal year in which the transportation is provided;

(C) the total weight of the transfer does not exceed 50,000 pounds; and

(D) such transportation is accomplished on a space available basis.

(f) Advance notification to Congress for transfer of certain excess defense articles

(1) In general

The President may not transfer excess defense articles that are significant military equipment (as defined in section 47(9) of the Arms Export Control Act [22 U.S.C. 2794(9)]) or excess defense articles valued (in terms of original acquisition cost) at \$7,000,000 or more, under this section or under the Arms Export Control Act (22 U.S.C. 2751 et seq.) until 30 days after the date on which the President has provided notice of the proposed transfer to the congressional committees specified in section 2394-1(a) of this title in accordance with procedures applicable to reprogramming notifications under that section.

(2) Contents

Such notification shall include—

(A) a statement outlining the purposes for which the article is being provided to the country, including whether such article has been previously provided to such country;

(B) an assessment of the impact of the transfer on the military readiness of the United States;

(C) an assessment of the impact of the transfer on the national technology and industrial base and, particularly, the impact on opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are to be transferred; and

(D) a statement describing the current value of such article and the value of such article at acquisition.

(g) Aggregate annual limitation

(1) In general

The aggregate value of excess defense articles transferred to countries under this sec-

tion in any fiscal year may not exceed \$425,000,000.

(2) Effective date

The limitation contained in paragraph (1) shall apply only with respect to fiscal years beginning after fiscal year 1996.

(h) Congressional presentation documents

Documents described in subsection (a) of this section justifying the transfer of excess defense articles shall include an explanation of the general purposes of providing excess defense articles as well as a table which provides an aggregate annual total of transfers of excess defense articles in the preceding year by country in terms of offers and actual deliveries and in terms of acquisition cost and current value. Such table shall indicate whether such excess defense articles were provided on a grant or sale basis.

(i) Excess Coast Guard property

For purposes of this section, the term “excess defense articles” shall be deemed to include excess property of the Coast Guard, and the term “Department of Defense” shall be deemed, with respect to such excess property, to include the Coast Guard.

(Pub. L. 87-195, pt. II, § 516, as added Pub. L. 99-661, div. A, title XI, § 1101, Nov. 14, 1986, 100 Stat. 3960; amended Pub. L. 100-202, § 101(b) [title VIII, § 8143], Dec. 22, 1987, 101 Stat. 1321-43, 1329-89; Pub. L. 101-189, div. A, title IX, § 934, Nov. 29, 1989, 103 Stat. 1538; Pub. L. 101-513, title V, § 589, Nov. 5, 1990, 104 Stat. 2057; Pub. L. 102-190, div. A, title X, § 1049(a), Dec. 5, 1991, 105 Stat. 1469; Pub. L. 102-391, title V, § 574, Oct. 6, 1992, 106 Stat. 1683; Pub. L. 102-484, div. A, title XIII, § 1313, Oct. 23, 1992, 106 Stat. 2548; Pub. L. 103-160, div. A, title XI, § 1182(c)(2), title XIV, § 1421, Nov. 30, 1993, 107 Stat. 1772, 1829; Pub. L. 103-236, title VII, § 731(a), Apr. 30, 1994, 108 Stat. 502; Pub. L. 104-106, div. A, title X, § 1012(g)(1), Feb. 10, 1996, 110 Stat. 422; Pub. L. 104-164, title I, § 104(a), July 21, 1996, 110 Stat. 1424; Pub. L. 106-113, div. B, § 1000(a)(7) [div. B, title XII, § 1211(b), 1213], Nov. 29, 1999, 113 Stat. 1536, 1501A-497, 1501A-498; Pub. L. 106-280, title I, § 122, Oct. 6, 2000, 114 Stat. 851; Pub. L. 107-228, div. B, title XII, § 1234, Sept. 30, 2002, 116 Stat. 1433.)

REFERENCES IN TEXT

Section 573(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, referred to in subsec. (b)(2), is section 573(e) of Pub. L. 101-167, which is set out in a note below.

The Arms Export Control Act, referred to in subsec. (f)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

PRIOR PROVISIONS

A prior section 2321j, Pub. L. 87-195, pt. II, § 516, as added Pub. L. 94-329, title I, § 105, June 30, 1976, 90 Stat. 732; amended Pub. L. 95-92, §§ 5(b), 7(b), Aug. 4, 1977, 91 Stat. 615, 617; Pub. L. 95-384, § 7(b), Sept. 26, 1978, 92 Stat. 732; Pub. L. 96-92, § 5(c), Oct. 29, 1979, 93 Stat. 703; Pub. L. 96-533, title I, § 112(d), Dec. 16, 1980, 94 Stat. 3139, provided for termination of authorities contained in this part other than the authorities contained in sections 2318, 2321h, and 2321i of this title, prior to repeal by Pub. L. 97-113, title I, § 110(d), Dec. 29, 1981, 95 Stat. 1526.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107-228 substituted “, to major non-NATO allies on such southern and southeastern flank, and to the Philippines” for “and to major non-NATO allies on such southern and southeastern flank”.

2000—Subsec. (e)(2)(C). Pub. L. 106-280 substituted “50,000” for “25,000”.

1999—Subsec. (b)(2). Pub. L. 106-113, §1000(a)(7) [title XII, §1211(b)], inserted “and thereafter for the four-period beginning on October 1, 2000,” after “October 1, 1996.”.

Subsec. (g)(1). Pub. L. 106-113, §1000(a)(7) [title XII, §1213], substituted “\$425,000,000” for “\$350,000,000”.

1996—Pub. L. 104-164 amended section generally, expanding geographic scope of President’s authority to transfer excess defense articles, including Coast Guard property and permitting waiver of Department of Defense reimbursement, to any country for military assistance programs or international narcotics control, so long as such transfer is preferable to sale and is consistent within congressionally documented Eastern Mediterranean policy requirements, meets certain terms of transfer requirements including preference for NATO and non-NATO allies on southern flank, complies with advance notification to Congress for certain excess defense articles, and is within aggregate annual limitations of \$350,000,000 in value, for provisions which authorized President to transfer excess defense articles to predominantly NATO countries on southern flank for purpose of modernization of their defense capabilities.

Subsec. (g). Pub. L. 104-106 added subsec. (g) which prohibited certain transfers of vessels on a grant basis.

1994—Subsec. (b)(4). Pub. L. 103-236 added par. (4).

1993—Subsec. (a). Pub. L. 103-160, §1182(c)(2), made technical amendment to Pub. L. 102-484, §1313(2). See 1992 Amendment note below.

Subsec. (a)(3). Pub. L. 103-160, §1421, inserted “or fiscal year 1992” after “fiscal year 1991”.

1992—Subsec. (a). Pub. L. 102-484, §1313(4), which directed the amendment of subsec. (a) by striking “and those countries which received Foreign Military Financing (FMF) assistance in fiscal year 1990 and which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf,” could not be executed because that language did not appear subsequent to amendment by Pub. L. 102-391. See below.

Pub. L. 102-484, §1313(3), inserted “and (3) to those countries which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf, and which either received Foreign Military Financing (FMF) assistance in fiscal year 1990 or are in the Near East Region and received Foreign Military Financing (FMF) assistance in fiscal year 1991,” after “southeastern flank of NATO which are eligible for United States security assistance.”.

Pub. L. 102-484, §1313(2), as amended by Pub. L. 103-160, §1182(c)(2), substituted “structure, (2)” for “structure, and”.

Pub. L. 102-484, §1313(1), inserted “(1)” after “may transfer”.

Pub. L. 102-391 repealed the amendment by Pub. L. 101-513. See 1990 Amendment note below.

1991—Subsec. (a). Pub. L. 102-190, §1049(a)(1), struck out “during the fiscal years 1987 through 1991,” before “the President may transfer”.

Subsec. (f). Pub. L. 102-190, §1049(a)(2), added subsec. (f).

1990—Subsec. (a). Pub. L. 101-513, which directed amendment of subsec. (a) by inserting “and those countries which received Foreign Military Financing (FMF) assistance in fiscal year 1990 and which, as of October 1, 1990, contributed armed forces to deter Iraqi aggression in the Arabian Gulf,” after the second occurrence of the words “United States security assistance,” was repealed by Pub. L. 102-391. See 1992 Amendment note above.

1989—Subsec. (a). Pub. L. 101-189 substituted “during the fiscal years 1987 through 1991” for “during the fiscal

years 1987, 1988, and 1989” and inserted at end “Transfers to recipient countries under this subsection shall be consistent with the policy framework for the Eastern Mediterranean region established in section 2373 of this title.”

1987—Subsec. (a). Pub. L. 100-202, §101(b) [title VIII, §8143(a), (b), (c)(1)], in first sentence substituted “, 1988, and 1989,” for “and 1988”, inserted “, and to major non-NATO allies on the southern and southeastern flank of NATO which are eligible for United States security assistance,” after “military structure”, and inserted “excess” before “defense articles”, and in second sentence inserted “excess defense” before “articles”.

Subsec. (b). Pub. L. 100-202, §101(b) [title VIII, §8143(c)(2)], in introductory text, inserted “excess” before “defense articles”.

Subsecs. (c), (d). Pub. L. 100-202, §101(b) [title VIII, §8143(c)(2)], inserted “excess” before “defense articles”.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, title X, §1012(g)(2), Feb. 10, 1996, 110 Stat. 422, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to the transfer of a vessel on or after the date of the enactment of this Act [Feb. 10, 1996] (other than a vessel the transfer of which is authorized by subsection (a) [110 Stat. 421] or by law before the date of the enactment of this Act).”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, title XI, §1182(c)(2), Nov. 30, 1993, 107 Stat. 1772, provided in part that the amendment made by that section is effective as of Oct. 23, 1992.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

MEDITERRANEAN EXCESS DEFENSE ARTICLES

Pub. L. 104-208, div. A, title I, §101(c) [title V, §535], Sept. 30, 1996, 110 Stat. 3009-121, 3009-153, provided that: “For the four-year period beginning on October 1, 1996, the President shall ensure that excess defense articles will be made available under section[s] 516 and 519 of the Foreign Assistance Act of 1961 [22 U.S.C. 2321j, 2321m] consistent with the manner in which the President made available excess defense articles under those sections during the four-year period that began on October 1, 1992, pursuant to section 573(e) of the Foreign Operations, Export Financing, Related Programs Appropriations Act, 1990 [Pub. L. 101-167, set out below].”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 104-107, title V, §536, Feb. 12, 1996, 110 Stat. 735.

AVOIDING DUPLICATIVE AMENDMENTS

Pub. L. 102-190, title X, §1049(b), Dec. 5, 1991, 105 Stat. 1469, which provided that if the International Cooperation Act of 1991 was enacted and made the same amendments to this section as did section 1049(a) of Pub. L. 102-190, then the duplicative amendments enacted by section 1049(a) would not take effect, was repealed by Pub. L. 102-484, div. A, title X, §1053(7), Oct. 23, 1992, 106 Stat. 2502.

MODERNIZATION OF MILITARY CAPABILITIES OF CERTAIN COUNTRIES

Pub. L. 101-167, title V, §573, Nov. 21, 1989, 103 Stat. 1246, as amended by Pub. L. 102-391, title V, §578(a), Oct. 6, 1992, 106 Stat. 1685, provided that:

“(a) AUTHORITY TO TRANSFER EXCESS DEFENSE ARTICLES.—

“(1) NATO SOUTHERN FLANK COUNTRIES.—The President may transfer—

“(A) to any NATO southern flank country which is eligible for United States security assistance and which is integrated into NATO’s military structure; and

“(B) to any major non-NATO ally on the southern and southeastern flank of NATO which is eligible for United States security assistance, such excess defense articles as may be necessary to help modernize the defense capabilities of such country.

“(2) MAJOR ILLICIT DRUG PRODUCING COUNTRIES.—Subject to subsection (f), the President may transfer to any country—

“(A) which is a major illicit drug producing country.

“(B) which has a democratic government, and

“(C) whose armed forces do not engage in a consistent pattern of gross violations of internationally recognized human rights, such excess defense articles as may be necessary to carry out subsection (f)(1).

“(3) TERMS OF TRANSFERS.—Excess defense articles may be transferred under this section without cost to the recipient country.

“(b) LIMITATIONS ON TRANSFERS.—The President may transfer excess defense articles under this section only if—

“(1) they are drawn from existing stocks of the Department of Defense;

“(2) funds available to the Department of Defense for the procurement of defense equipment are not expended in connection with the transfer; and

“(3) the President determines that the transfer of the excess defense articles will not have an adverse impact on the military readiness of the United States.

“(c) NOTIFICATION TO CONGRESS.—

“(1) ADVANCE NOTICE.—The President may not transfer excess defense articles under this section until thirty days after the President has provided notice of the proposed transfer to the committees specified in paragraph (2). This notification shall include—

“(A) a certification of the need for the transfer;

“(B) an assessment of the impact of the transfer on the military readiness of the United States; and

“(C) the value of the excess defense articles to be transferred.

“(2) COMMITTEES TO BE NOTIFIED.—Notice shall be provided pursuant to paragraph (1) to the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives and the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.

“(d) WAIVER OF REQUIREMENT FOR REIMBURSEMENT OF DOD EXPENSES.—Section 632(d) of the Foreign Assistance Act of 1961 [22 U.S.C. 2392(d)] does not apply with respect to transfers of excess defense articles under this section.

“(e) MAINTENANCE OF MILITARY BALANCE IN EASTERN MEDITERRANEAN.—

“(1) UNITED STATES POLICY.—The Congress intends that excess defense articles be made available under this section consistent with the United States policy, established by section 841 of the International Cooperation Act of 1989 [probably means section 841 of H.R. 2655, 101st Congress, which was not enacted], of maintaining the military balance in the Eastern Mediterranean.

“(2) MAINTENANCE OF BALANCE.—Accordingly, the President shall ensure that, over the four-year period beginning on October 1, 1992, the ratio of—

“(A) the value of excess defense articles made available for Turkey under this section, to

“(B) the value of excess defense articles made available for Greece under this section, closely approximates the ratio of—

“(i) the amount of foreign military financing provided for Turkey, to

“(ii) the amount of foreign military financing provided for Greece.

“(3) EXCEPTION TO REQUIREMENT.—This subsection shall not apply if either Greece or Turkey ceases to be eligible to receive excess defense articles under subsection (a).

“(f) MAJOR ILLICIT DRUG PRODUCING COUNTRIES IN LATIN AMERICA AND THE CARIBBEAN.—

“(1) PURPOSE.—Excess defense articles shall be transferred under subsection (a)(2) for the purpose of encouraging the military forces of an eligible country in Latin America and the Caribbean to participate with local law enforcement agencies in a comprehensive national antinarcotics program, conceived and developed by the government of that country, by conducting activities within that country and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit narcotic or psychotropic [sic] drugs or other controlled substances.

“(2) USES OF EXCESS DEFENSE ARTICLES.—Excess defense articles may be furnished to a country under subsection (a)(2) only if that country ensures that those excess defense articles will be used only in support of antinarcotics activities.

“(3) ROLE OF THE SECRETARY OF STATE.—The Secretary of State shall determine the eligibility of countries to receive excess defense articles under subsection (a)(2) and insure that any transfer is coordinated with other antinarcotics enforcement programs assisted by the United States Government.

“(4) LIMITATION.—The aggregate value of excess defense articles transferred to a country under subsection (a)(2) in any fiscal year may not exceed \$10,000,000.

“(g) DEFINITIONS.—As used in this section—

“(1) the term ‘excess defense article’ has the meaning given that term by section 644(g) [probably means section 644(g) of Pub. L. 87-195, which is classified to section 2403(g) of this title];

“(2) the term ‘made available’ means that a good faith offer is made by the United States to furnish the excess defense articles to a country;

“(3) the term ‘major non-NATO ally’ includes Australia, Egypt, Israel, Japan, and New Zealand;

“(4) the term ‘NATO’ means the North Atlantic Treaty Organization; and

“(5) the term ‘NATO southern flank countries’ means Greece, Italy, Portugal, Spain, and Turkey.”

[For delegation of functions of President under section 573 of Pub. L. 101-567, set out above, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.]

Provisions similar to those appearing in section 573(e) of Pub. L. 101-167, set out above, were contained in the following prior appropriation acts:

Pub. L. 100-461, title V, §569, Oct. 1, 1988, 102 Stat. 2268-43.

Pub. L. 100-202, §101(e) [title V, §582], Dec. 22, 1987, 101 Stat. 1329-131, 1329-182.

§ 2321k. Designation of major non-NATO allies

(a) Notice to Congress

The President shall notify the Congress in writing at least 30 days before—

(1) designating a country as a major non-NATO ally for purposes of this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.); or

(2) terminating such a designation.

(b) Initial designations

Australia, Egypt, Israel, Japan, the Republic of Korea, and New Zealand shall be deemed to