

**(c) Covered assistance**

The National Security Assistance Strategy should cover assistance provided under—

- (1) section 23 of the Arms Export Control Act [22 U.S.C. 2763];
- (2) chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.); and
- (3) section 516 of the Foreign Assistance Act of 1961 [22 U.S.C. 2321j].

(Pub. L. 106-280, title V, §501, Oct. 6, 2000, 114 Stat. 854.)

## REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(9), 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.

The Foreign Assistance Act of 1961, referred to in subsecs. (b)(9) and (c)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to this chapter. Chapter 5 of part II of the Act is classified generally to part V (§2347 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

Section was enacted as part of the Security Assistance Act of 2000, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

## DEFINITION

Pub. L. 106-280, §2, Oct. 6, 2000, 114 Stat. 846, provided that: "In this Act [see Short Title of 2000 Amendments note set out under section 2151 of this title], the term 'appropriate committees of Congress' means the Committee on Foreign Relations of the Senate and the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives."

## PART II—MILITARY ASSISTANCE

**§ 2311. General authority****(a) Defense articles and services; noncombatant personnel; transfer of funds**

The President is authorized to furnish military assistance, on such terms and conditions as he may determine, to any friendly country or international organization, the assisting of which the President finds will strengthen the security of the United States and promote world peace and which is otherwise eligible to receive such assistance, by—

- (1) acquiring for any source and providing (by loan or grant) any defense article or defense service;
- (2) assigning or detailing members of the Armed Forces of the United States and other personnel of the Department of Defense to perform duties of a noncombatant nature; or
- (3) transferring such of the funds appropriated or otherwise made available under this part as the President may determine for assistance to a recipient country, to the account in which funds for the procurement of defense articles and defense services under section 21 and section 22 of the Arms Export Control Act [22 U.S.C. 2761 and 2762] have been deposited for such recipient, to be merged with such deposited funds, and to be used solely to meet

obligations of the recipient for payment for sales under that Act [22 U.S.C. 2751 et seq.].

Sales which are wholly paid from funds transferred under paragraph (3) or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act [22 U.S.C. 2763] shall be priced to exclude the costs of salaries of members of the Armed Forces of the United States (other than the Coast Guard).

**(b) Terms and conditions**

In addition to such other terms and conditions as the President may determine pursuant to subsection (a), defense articles may be loaned thereunder only if—

- (1) there is a bona fide reason, other than the shortage of funds, for providing such articles on a loan basis rather than on a grant basis;
- (2) there is a reasonable expectation that such articles will be returned to the agency making the loan at the end of the loan period, unless the loan is then renewed;
- (3) the loan period is of fixed duration not exceeding five years, during which such article may be recalled for any reason by the United States;
- (4) the agency making the loan is reimbursed for the loan based on the amount charged to the appropriation for military assistance under subsection (c); and
- (5) the loan agreement provides that (A) if the defense article is damaged while on loan, the country or international organization to which it was loaned will reimburse the United States for the cost of restoring or replacing the defense article, and (B) if the defense article is lost or destroyed while on loan, the country or international organization to which it was loaned will pay to the United States an amount equal to the replacement cost (less any depreciation in the value) of the defense article.

**(c) Appropriation charges; exceptions**

(1) In the case of any loan of a defense article or defense service made under this section, there shall be a charge to the appropriation for military assistance for any fiscal year while the article or service is on loan in an amount based on—

- (A) the out-of-pocket expenses authorized to be incurred in connection with such loan during such fiscal year; and
- (B) the depreciation which occurs during such year while such article is on loan.

(2) The provisions of this subsection shall not apply—

- (A) to any particular defense article or defense service which the United States Government agreed, prior to December 17, 1973, to lend; and
- (B) to any defense article or defense service, or portion thereof, acquired with funds appropriated for military assistance under this chapter.

(Pub. L. 87-195, pt. II, §503, Sept. 4, 1961, 75 Stat. 435; Pub. L. 88-633, §201(a), Oct. 7, 1964, 78 Stat. 1011; Pub. L. 89-171, pt. II, §201(a), Sept. 6, 1965, 79 Stat. 656; Pub. L. 90-137, pt. II, §201(b), Nov. 14, 1967, 81 Stat. 455; Pub. L. 93-189, §12(b)(1),

Dec. 17, 1973, 87 Stat. 720; Pub. L. 96-533, title I, § 112(a), Dec. 16, 1980, 94 Stat. 3138; Pub. L. 97-113, title I, §§ 109(c), 110(c), Dec. 29, 1981, 95 Stat. 1526; Pub. L. 99-83, title I, § 123(a), Aug. 8, 1985, 99 Stat. 205; Pub. L. 100-461, title V, § 586(a), Oct. 1, 1988, 102 Stat. 2268-50.)

## REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (a)(3), 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.

This chapter, referred to in subsec. (c)(2)(B), was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

## CODIFICATION

A guaranty provision, formerly subsec. (e) of this section, was renumbered section 525(a) of Pub. L. 87-195 by Pub. L. 90-137, pt. II, § 201(b)(3), Nov. 14, 1967, 81 Stat. 455, and classified to section 2345(a) of this title and repealed by Pub. L. 90-629, ch. 4, § 45(a), Oct. 22, 1968, 82 Stat. 1327.

## AMENDMENTS

1988—Subsec. (a). Pub. L. 100-461 inserted in last sentence "or from funds made available on a non-repayable basis under section 23 of the Arms Export Control Act" after "under paragraph (3)" and "(other than the Coast Guard)" after "Armed Forces of the United States".

1985—Subsec. (a). Pub. L. 99-83 inserted sentence relating to pricing of sales wholly paid from transferred funds.

1981—Subsec. (a)(3). Pub. L. 97-113, § 110(c), substituted "country" for "specified in section 2312(a)(1) of this title, within the dollar limitations of that section".

Subsec. (b)(5). Pub. L. 97-113 substituted provision respecting payment of restoration or replacement costs for defense articles on loan for provision for making such a loan only if arrangements were made with the agency making the loan for reimbursement in the event the article was lost or destroyed while on loan, the reimbursement of which was to be made first out of any funds available to carry out this part and based on the depreciated value of the article at the time of loss or destruction.

1980—Subsec. (a)(3). Pub. L. 96-533 added par. (3).

1973—Pub. L. 93-189 designated existing provisions as subsec. (a), struck out references to making financial contributions to multilateral programs for the acquisition or construction of facilities for collective defense and providing financial assistance for expenses incident to participation by the United States government in regional or collective defense organizations, and added subsecs. (b) and (c).

1967—Subsec. (a). Pub. L. 90-137, § 201(b)(1), substituted "or grant" for " , lease, sale, exchange, grant, or any other means".

Subsec. (d). Pub. L. 90-137, § 201(b)(2), substituted a period for " ; and".

Subsec. (e). Pub. L. 90-137, § 201(b)(3), struck out subsec. (e) which related to the guaranty and insuring against political and credit risks in connection with credit sales for defense articles and services procured in the United States. See Codification note above.

1965—Subsec. (b). Pub. L. 89-171 struck out "in foreign countries" after "facilities".

1964—Subsec. (e). Pub. L. 88-633 added subsec. (e).

## EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-461, title V, § 586(c), Oct. 1, 1988, 102 Stat. 2268-50, provided that: "This section [amending this section] shall be effective on October 1, 1989."

## 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.

## REPORTS TO CONGRESSIONAL COMMITTEES

Pub. L. 100-461, title III, Oct. 1, 1988, 102 Stat. 2268-17 provided in part: "That the Committees on Appropriations shall be furnished on March 1 of each year a complete report of the status of military assistance funds appropriated by this or any future Act committed for the payment of any sales under the Arms Export Control Act [22 U.S.C. 2751 et seq.] as regards the individual sale, item description, and estimated sales price."

## FINDINGS BY SECRETARY OF STATE

The Secretary of State, in the implementation of the functions delegated to him under section 2314(a)(1), (4), and (e) of this title, was authorized by section 1-701(e)(1) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56678, eff. Oct. 1, 1979, set out as a note under section 2381 of this title, to find, in the case of a proposed transfer of a defense article or a related training or a related defense service by a foreign country or international organization to a foreign country or international organization not otherwise eligible under subsec. (a) of this section, whether the proposed transfer would strengthen the security of the United States and promote world peace.

## REVIEW OF MILITARY ASSISTANCE PROGRAM; REDUCTION AND ELIMINATION PLAN; SUBMITTAL TO CONGRESS

Pub. L. 93-559, § 17, Dec. 30, 1974, 88 Stat. 1800, which set forth provisions respecting review of military assistance program and submittal to Congress of plan for reduction and elimination, was repealed by Pub. L. 95-384, § 29(c)(4), Sept. 26, 1978, 92 Stat. 747.

**§ 2312. Authorization of appropriations****(a) Authorization and availability of amounts**

(1) There are authorized to be appropriated to the President to carry out the purposes of this part \$805,100,000 for fiscal year 1986 and \$805,100,000 for fiscal year 1987.

(2) Amounts appropriated under this subsection are authorized to remain available until expended.

**(b) Programing and budgeting procedures**

In order to make sure that a dollar spent on military assistance to foreign countries is as necessary as a dollar spent for the United States military establishment, the President shall establish procedures for programing and budgeting so that programs of military assistance come into direct competition for financial support with other activities and programs of the Department of Defense.