

serted 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.

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

§ 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.)

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, with certain conditions, see section 1(h) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16129, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

§ 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 Food for Peace Act, 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; Pub. L. 110-246, title III, §3001(b)(1)(A), (2)(T), June 18, 2008, 122 Stat. 1820, 1821.)

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 Food for Peace Act, as amended, referred to in subsec. (a), is act July 10, 1954, ch. 469, 68 Stat. 454, 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

2008—Subsec. (a). Pub. L. 110-246 substituted “Food for Peace Act” for “Agricultural Trade Development and Assistance Act of 1954”.

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.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsec. (a) of this section, see section 1(i) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

§ 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, the Committee on Foreign Affairs 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 defense 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) 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;

(8) 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;

(9) 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 2314(a)(1)(B) of this title, 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;

(10) 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. 3091 et seq.]; relating to congressional oversight of intelligence activities);

(11) 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; and

(12) a report on all exports of significant military equipment for which information has been provided pursuant to section 2778(i) of this title.

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) Subject to paragraph (6), 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, the Committee on Foreign Affairs 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), or (in the case of a sale of design and construction services) the information specified in clauses (A) through (D) of paragraph (9)¹ of subsection (a), and a description, containing the information specified in paragraph (8)¹ of subsection (a), 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 person-

nel 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 of any offset agreement with respect to such sale;

(D) an evaluation, prepared by the Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence, 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 serv-

¹ See References in Text note below.

ices, 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) may be classified if the public disclosure thereof would be clearly detrimental to the security of the United States, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information. 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, the Republic of Korea, Israel, 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, the Republic of Korea, Israel, 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 2768¹ 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) Subject to paragraph (6), 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, the Committee on Foreign Affairs 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.

(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.

(6) The limitation in paragraph (1) and the requirement in paragraph (5)(C) shall apply in the case of a letter of offer to sell to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, the Republic of Korea, Israel, or New Zealand that does not authorize a new sales territory that includes any country other than such countries only if the letter of offer involves—

(A) the sale of major defense equipment under this chapter for, or the enhancement or upgrade of major defense equipment at a cost of, \$25,000,000 or more, as the case may be; and

(B) the sale of defense articles or services for, or the enhancement or upgrade of defense articles or services at a cost of, \$100,000,000 or more, as the case may be; or

(C) the sale of design and construction services for, or the enhancement or upgrade of design and construction services at a cost of, \$300,000,000 or more, as the case may be.

(c) Application for export license; submission of numbered Presidential certification and statement to Congress; contents; emergency circumstances; joint resolution; exception; notification of upgrades

(1) Subject to paragraph (5), 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 (or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more), before issuing such license the President shall transmit to the Speaker of the House of Representatives, the Committee on Foreign Affairs 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 and a description of any such offset agreement. 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, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information.

(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, the Republic of Korea, Israel, 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;

(B) in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, 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

(C) 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 de-

scription 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.

(4) The provisions of subsection (b)(5) shall apply to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to paragraph (1) in the same manner and to the same extent as that subsection applies to any equipment, article, or service for which a numbered certification has been transmitted to Congress pursuant to subsection (b)(1). For purposes of such application, any reference in subsection (b)(5) to “a letter of offer” or “an offer” shall be deemed to be a reference to “a contract”.

(5) In the case of an application by a person (other than with regard to a sale under section 2761 or 2762 of this title) for a license for the export to a member country of the North Atlantic Treaty Organization (NATO) or Australia, Japan, the Republic of Korea, Israel, or New Zealand that does not authorize a new sales territory that includes any country other than such countries, the limitations on the issuance of the license set forth in paragraph (1) shall apply only if the license is for export of—

(A) major defense equipment sold under a contract in the amount of \$25,000,000 or more; or

(B) defense articles or defense services sold under a contract in the amount of \$100,000,000 or more.

(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 15 days prior to an export pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 2778(j)(1) of this title, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.

(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 pro-

posed commercial agreement in a manner similar to the certification required under subsection (c)(1) 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, the Republic of Korea, Israel, 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 immediate 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.

(6) The President shall notify the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate at least 15 days prior to an export pursuant to a treaty referred to in section 2778(j)(1)(C)(i) of this title to which the provisions of paragraph (1) of this subsection would apply absent an exemption granted under section 2778(j)(1) of this title, for which purpose such notification shall contain information comparable to that specified in paragraph (1) of this subsection.

(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).

(f) Publication of arms sales certifications

The President shall cause to be published in a timely manner in the Federal Register, upon transmittal to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate, the full unclassified text of—

(1) each numbered certification submitted pursuant to subsection (b);

(2) each notification of a proposed commercial sale submitted under subsection (c); and

(3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d).

(g) Confidentiality

Information relating to offset agreements provided pursuant to subparagraph (C) of the fifth sentence of subsection (b)(1) and the second sentence of subsection (c)(1) shall be treated as confidential information in accordance with section 4614(c)¹ of title 50.

(h) Certification requirement relating to Israel’s qualitative military edge

(1) In general

Any certification relating to a proposed sale or export of defense articles or defense services under this section to any country in the Middle East other than Israel shall include a determination that the sale or export of the defense articles or defense services will not adversely affect Israel’s qualitative military edge over military threats to Israel.

(2) Requirements with respect to determination for major defense equipment

A determination under paragraph (1) relating to the sale or export of major defense equipment shall include—

(A) a detailed explanation of Israel’s capacity to address the improved capabilities provided by such sale or export;

(B) a detailed evaluation of—

(i) how such sale or export alters the strategic and tactical balance in the region, including relative capabilities; and

(ii) Israel’s capacity to respond to the improved regional capabilities provided by such sale or export;

(C) an identification of any specific new capacity, capabilities, or training that Israel

may require to address the regional or country-specific capabilities provided by such sale or export; and

(D) a description of any additional United States security assurances to Israel made, or requested to be made, in connection with, or as a result of, such sale or export.

(3) Qualitative military edge defined

In this subsection, the term “qualitative military edge” means the ability to counter and defeat any credible conventional military threat from any individual state or possible coalition of states or from non-state actors, while sustaining minimal damages and casualties, through the use of superior military means, possessed in sufficient quantity, including weapons, command, control, communication, intelligence, surveillance, and reconnaissance capabilities that in their technical characteristics are superior in capability to those of such other individual or possible coalition of states or non-state actors.

(i) Prior notification of shipment of arms

At least 30 days prior to a shipment of defense articles subject to the requirements of subsection (b) at the joint request of the Chairman and Ranking Member of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall provide notification of such pending shipment, in unclassified form, with a classified annex as necessary, to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

(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; Pub. L. 105–277, div. G, subdiv. A, title XII, §1225(a)(1), Oct. 21, 1998, 112 Stat. 2681–773; Pub. L. 106–113, div. B, §1000(a)(7) [div. B, title XII, §§1224, 1245, title XIII, §§1301, 1302(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–498, 1501A–502, 1501A–510, 1501A–511; Pub. L. 106–280, title I, §102(c)(1), Oct. 6, 2000, 114 Stat. 849; Pub. L. 107–228, div. B, title XII, §§1205(a), 1262(c), title XIV, §1405(a)(2), Sept. 30, 2002, 116 Stat. 1427, 1434, 1457; Pub. L. 110–429, title II, §§201(d), 203(b)(1), Oct. 15, 2008, 122 Stat. 4843, 4845; Pub. L. 111–266, title I, §104(d), title III, §301(1), Oct. 8, 2010, 124 Stat. 2799, 2804; Pub. L. 113–276, title II, §§201, 208(a)(1), Dec. 18, 2014,

128 Stat. 2990, 2992; Pub. L. 113–296, §11(b), Dec. 19, 2014, 128 Stat. 4078.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (b)(1), (6)(A), 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 National Security Act of 1947, referred to in subsec. (a)(10), is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§3001 et seq.) of Title 50. Title V of the National Security Act of 1947 is now classified generally to subchapter III (§3091 et seq.) of chapter 44 of Title 50. For complete classification of this Act to the Code, see Tables.

Paragraphs (8) and (9) of subsection (a), referred to in subsec. (b)(1), were redesignated as paragraphs (7) and (8), respectively, of subsection (a) by Pub. L. 107–228, div. B, title XII, §1262(c)(2), Sept. 30, 2002, 116 Stat. 1434.

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsecs. (b)(2), (c)(3)(A), and (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 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 4614(c) of title 50, referred to in subsec. (g), was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232.

AMENDMENTS

2014—Subsecs. (a), (b)(1), (5)(C), (c)(1), (f). Pub. L. 113–276, §208(a)(1), substituted “the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and” for “the Speaker of the House of Representatives and”.

Subsec. (h)(2), (3). Pub. L. 113–296 added par. (2) and redesignated former par. (2) as (3).

Subsec. (i). Pub. L. 113–276, §201, added subsec. (i).

2010—Subsec. (b). Pub. L. 111–266, §301(1), inserted “Israel,” before “or New Zealand” in concluding provisions of par (1), in par. (2), and in introductory provisions of par. (6).

Subsec. (c). Pub. L. 111–266, §301(1), inserted “Israel,” before “or New Zealand” in par. (2)(A) and in introductory provisions of par. (5).

Subsec. (c)(6). Pub. L. 111–266, §104(d)(1), added par. (6).

Subsec. (d)(2)(A). Pub. L. 111–266, §301(1), inserted “Israel,” before “or New Zealand”.

Subsec. (d)(6). Pub. L. 111–266, §104(d)(2), added par. (6).

2008—Subsecs. (b), (c), (d)(2)(A). Pub. L. 110–429, §203(b)(1), inserted “the Republic of Korea,” before “or New Zealand” wherever appearing.

Subsec. (h). Pub. L. 110–429, §201(d), added subsec. (h).

2002—Subsec. (a)(7) to (13). Pub. L. 107–228, §1262(c), redesignated pars. (8) to (13) as (7) to (12), respectively, and struck out former par. (7) which read as follows: “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, including both personnel assigned to the country and personnel temporarily in the country by detail or otherwise;”.

Subsec. (b)(1). Pub. L. 107–228, §1405(a)(2)(A)(i), substituted “(1) Subject to paragraph (6), in the case of” for “(1) In the case of” in introductory provisions.

Subsec. (b)(5)(C). Pub. L. 107–228, §1405(a)(2)(A)(ii), substituted “Subject to paragraph (6), if” for “If”.

Subsec. (b)(6). Pub. L. 107–228, §1405(a)(2)(A)(iii), added par. (6).

Subsec. (c)(1). Pub. L. 107–228, §1405(a)(2)(B)(i), substituted “(1) Subject to paragraph (5), in the case of” for “(1) In the case of”.

Pub. L. 107–228, §1205(a), inserted “(or, in the case of a defense article that is a firearm controlled under category I of the United States Munitions List, \$1,000,000 or more)” after “\$50,000,000 or more”.

Subsec. (c)(5). Pub. L. 107–228, §1405(a)(2)(B)(ii), added par. (5).

2000—Subsec. (c)(2)(B), (C). Pub. L. 106–280 added subpar. (B) and redesignated former subpar. (B) as (C).

1999—Subsec. (a)(13). Pub. L. 106–113, §1000(a)(7) [title XIII, §1302(b)], added par. (13).

Subsec. (b)(1). Pub. L. 106–113, §1000(a)(7) [title XIII, §1301(b)(1)], in sixth sentence, inserted before period at end “, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information”.

Subsec. (b)(1)(C). Pub. L. 106–113, §1000(a)(7) [title XII, §1245(a)(1)], substituted “and a description of any offset agreement with respect to such sale;” for “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);”.

Subsec. (c)(1). Pub. L. 106–113, §1000(a)(7) [title XIII, §1301(b)(2)], in last sentence, inserted before period at end “, in which case the information shall be accompanied by a description of the damage to the national security that could be expected to result from public disclosure of the information”.

Pub. L. 106–113, §1000(a)(7) [title XII, §1245(a)(2)], in second sentence, substituted “and a description of any such offset agreement” for “(if known on the date of transmittal of such certification)”.

Subsec. (c)(4). Pub. L. 106–113, §1000(a)(7) [title XII, §1224], added par. (4).

Subsec. (e). Pub. L. 106–113, §1000(a)(7) [title XII, §1245(b)(1)], redesignated subsec. (e), relating to publication of arms sales certifications, as (f).

Subsec. (f). Pub. L. 106–113, §1000(a)(7) [title XIII, §1301(a)], which directed amendment of subsec. (e), relating to publication of arms sales certifications, by inserting “in a timely manner” after “to be published” and by substituting “the full unclassified text of—

“(1) each numbered certification submitted pursuant to subsection (b);

“(2) each notification of a proposed commercial sale submitted under subsection (c); and

“(3) each notification of a proposed commercial technical assistance or manufacturing licensing agreement submitted under subsection (d).” for “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.”, was executed by making the amendment in subsec. (f) to reflect the probable intent of Congress and the redesignation of that subsec. (e) as (f). See 1999 Amendment note below.

Pub. L. 106–113, §1000(a)(7) [title XII, §1245(b)(1)], redesignated subsec. (e), relating to publication of arms sales certifications, as (f).

Subsec. (g). Pub. L. 106–113, §1000(a)(7) [title XII, §1245(b)(2)], added subsec. (g).

1998—Subsec. (b)(1)(D). Pub. L. 105–277, in introductory provisions, substituted “Secretary of State in consultation with the Secretary of Defense and the Director of Central Intelligence” for “Director of the Arms Control and Disarmament Agency in consultation with the Secretary of State and the Secretary of Defense”.

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”.

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 (1) 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 “subsection (c)(1)” for “subsection (c)”.

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 cer-

tification 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

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the

Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.

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 1996 AMENDMENTS

Pub. L. 104–201, title X, § 1045(b), Sept. 23, 1996, 110 Stat. 2645, provided that: “Paragraph (12) of section 36(a) of the Arms Export Control Act [now 22 U.S.C. 2776(a)(11)], 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

Pub. L. 94–329, title II, § 211(b), June 30, 1976, 90 Stat. 744, 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.”

Pub. L. 94–329, title VI, § 604(c), June 30, 1976, 90 Stat. 768, 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].”

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90–629, set out as a note under section 2751 of this title.

DELEGATION OF FUNCTIONS

For delegation of certain functions of the President under this section, with certain conditions, see section 1(j)–(m) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

ASSESSMENT OF ISRAEL’S QUALITATIVE MILITARY EDGE OVER MILITARY THREATS

Pub. L. 110–429, title II, § 201, Oct. 15, 2008, 122 Stat. 4843, as amended by Pub. L. 113–296, § 11(a), Dec. 19, 2014, 128 Stat. 4078, provided that:

“(a) ASSESSMENT REQUIRED.—The President shall carry out an empirical and qualitative assessment on an ongoing basis of the extent to which Israel possesses a qualitative military edge over military threats to Israel. The assessment required under this subsection shall be sufficiently robust so as to facilitate comparability of data over concurrent years.

“(b) USE OF ASSESSMENT.—The President shall ensure that the assessment required under subsection (a) is used to inform the review by the United States of applications to sell defense articles and defense services under the Arms Export Control Act (22 U.S.C. 2751 et seq.) to countries in the Middle East.

“(c) REPORTS.—

“(1) INITIAL REPORT.—Not later than June 30, 2009, the President shall transmit to the appropriate congressional committees a report on the initial assessment required under subsection (a).

“(2) QUADRENNIAL REPORT.—Not later than four years after the date on which the President transmits the initial report under paragraph (1), and every four years thereafter, the President shall transmit to the appropriate congressional committees a report on the most recent assessment required under subsection (a).

“(3) BIENNIAL UPDATES.—Two years after the date on which each quadrennial report is transmitted to Congress, the President shall—

“(A) reevaluate the assessment required under subsection (a); and

“(B) inform and consult with the appropriate congressional committees on the results of the reevaluation conducted pursuant to subparagraph (A).

“(d) CERTIFICATION.—[Amended this section.]

“(e) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

“(2) QUALITATIVE MILITARY EDGE.—The term ‘qualitative military edge’ has the meaning given the term in section 36(h) of the Arms Export Control Act, as added by subsection (d) of this section [22 U.S.C. 2776(h)].”

[Memorandum of President of the United States, June 8, 2009, 74 F.R. 28863, provided that the functions of the President in section 201(a) to (c) of Pub. L. 110-429, set out above, are delegated to the Secretary of State, in coordination with the Secretary of Defense.]

NATIONAL DISCLOSURE POLICY FOR SENSITIVE WEAPONS TECHNOLOGY; REPORT TO CONGRESS

Pub. L. 96-92, §20(a), Oct. 29, 1979, 93 Stat. 710, 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.

§ 2776a. Repealed. Pub. L. 112-81, div. A, title X, § 1062(d)(4), Dec. 31, 2011, 125 Stat. 1585

Section, Pub. L. 109-364, div. A, title XII, §1231, Oct. 17, 2006, 120 Stat. 2430; Pub. L. 110-181, div. A, title X, §1063(c)(11), Jan. 28, 2008, 122 Stat. 323, required annual report on foreign sales of significant military equipment manufactured in the United States.

§ 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), 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.

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

§ 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; 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.