

SUBCHAPTER II—FOREIGN MILITARY
SALES AUTHORIZATIONS

§ 2761. Sales from stocks

(a) **Eligible countries or international organizations; basis of payment; valuation of certain defense articles**

(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, not less than the actual value thereof;

(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

(C) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2347 et seq.] or to any high-income foreign country (as described in that chapter), only those additional costs that are incurred by the United States Government in furnishing such assistance.

(2) For purposes of subparagraph (A) of paragraph (1), the actual value of a naval vessel of 3,000 tons or less and 20 years or more of age shall be considered to be not less than the greater of the scrap value or fair value (including conversion costs) of such vessel, as determined by the Secretary of Defense.

(b) **Time of payment**

Except as provided by subsection (d) of this section, payment shall be made in advance or, if the President determines it to be in the national interest, upon delivery of the defense article or rendering of the defense service.

(c) **Personnel performing defense services sold as prohibited from performing combat activities**

(1) Personnel performing defense services sold under this chapter may not perform any duties of a combatant nature, including any duties related to training and advising that may engage United States personnel in combat activities, outside the United States in connection with the performance of those defense services.

(2) Within forty-eight hours of the existence of, or a change in status of significant hostilities or terrorist acts or a series of such acts, which may endanger American lives or property, involving a country in which United States personnel are performing defense services pursuant to this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], the President shall submit to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, classified if necessary, setting forth—

(A) the identity of such country;

(B) a description of such hostilities or terrorist acts; and

(C) the number of members of the United States Armed Forces and the number of United States civilian personnel that may be endangered by such hostilities or terrorist acts.

(d) **Billings; interest after due date, rates of interest and extension of due date**

If the President determines it to be in the national interest pursuant to subsection (b) of this section, billings for sales made under letters of offer issued under this section after June 30, 1976, may be dated and issued upon delivery of the defense article or rendering of the defense service and shall be due and payable upon receipt thereof by the purchasing country or international organization. Interest shall be charged on any net amount due and payable which is not paid within sixty days after the date of such billing. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the billing and shall be computed from the date of billing. The President may extend such sixty-day period to one hundred and twenty days if he determines that emergency requirements of the purchaser for acquisition of such defense articles or defense services exceed the ready availability to the purchaser of funds sufficient to pay the United States in full for them within such sixty-day period and submits that determination to the Congress together with a special emergency request for the authorization and appropriation of additional funds to finance such purchases under this chapter.

(e) **Charges; reduction or waiver**

(1) After September 30, 1976, letters of offer for the sale of defense articles or for the sale of defense services that are issued pursuant to this section or pursuant to section 2762 of this title shall include appropriate charges for—

(A) administrative services, calculated on an average percentage basis to recover the full estimated costs (excluding a pro rata share of fixed base operation costs) of administration of sales made under this chapter to all purchasers of such articles and services as specified in section 2792(b) of this title and section 2792(c) of this title;

(B) a proportionate amount of any non-recurring costs of research, development, and production of major defense equipment (except for equipment wholly paid for either from funds transferred under section 503(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2311(a)(3)] or from funds made available on a nonrepayable basis under section 2763 of this title); and

(C) the recovery of ordinary inventory losses associated with the sale from stock of defense articles that are being stored at the expense of the purchaser of such articles.

(2)(A) The President may reduce or waive the charge or charges which would otherwise be con-

sidered appropriate under paragraph (1)(B) for particular sales that would, if made, significantly advance United States Government interests in North Atlantic Treaty Organization standardization, standardization with the Armed Forces of Japan, Australia, the Republic of Korea, Israel, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries, or foreign procurement in the United States under co-production arrangements.

(B) The President may waive the charge or charges which would otherwise be considered appropriate under paragraph (1)(B) for a particular sale if the President determines that—

(i) imposition of the charge or charges likely would result in the loss of the sale; or

(ii) in the case of a sale of major defense equipment that is also being procured for the use of the Armed Forces, the waiver of the charge or charges would (through a resulting increase in the total quantity of the equipment purchased from the source of the equipment that causes a reduction in the unit cost of the equipment) result in a savings to the United States on the cost of the equipment procured for the use of the Armed Forces that substantially offsets the revenue foregone by reason of the waiver of the charge or charges.

(C) The President may waive, for particular sales of major defense equipment, any increase in a charge or charges previously considered appropriate under paragraph (1)(B) if the increase results from a correction of an estimate (reasonable when made) of the production quantity base that was used for calculating the charge or charges for purposes of such paragraph.

(3)(A) The President may waive the charges for administrative services that would otherwise be required by paragraph (1)(A) in connection with any sale to the North Atlantic Treaty Organization (NATO) Support and Procurement Organization and its executive agencies in support of—

(i) a support or procurement partnership agreement; or

(ii) a NATO/SHAPE project.

(B) The Secretary of Defense may reimburse the fund established to carry out section 2792(b) of this title in the amount of the charges waived under subparagraph (A) of this paragraph. Any such reimbursement may be made from any funds available to the Department of Defense.

(C) As used in this paragraph—

(i) the term “support or procurement partnership agreement” means an agreement between two or more member countries of the North Atlantic Treaty Organization (NATO) Support and Procurement Organization and its executive agencies that—

(I) is entered into pursuant to the terms of the charter of that organization; and

(II) is for the common logistic support of activities common to the participating countries; and

(ii) the term “NATO/SHAPE project” means a common-funded project supported by allocated credits from North Atlantic Treaty Organization bodies or by host nations with NATO Infrastructure funds.

(f) Public inspection of contracts

Any contracts entered into between the United States and a foreign country under the authority of this section or section 2762 of this title shall be prepared in a manner which will permit them to be made available for public inspection to the fullest extent possible consistent with the national security of the United States.

(g) North Atlantic Treaty Organization standardization agreements, similar agreements; reimbursement for costs; transmittal to Congress

The President may enter into North Atlantic Treaty Organization standardization agreements in carrying out section 814 of the Act of October 7, 1975 (Public Law 94-106), and may enter into similar agreements with countries which are major non-NATO allies, for the cooperative furnishing of training on bilateral or multilateral basis, if the financial principles of such agreements are based on reciprocity. Such agreements shall include reimbursement for all direct costs but may exclude reimbursement for indirect costs, administrative surcharges, and costs of billeting of trainees (except to the extent that members of the United States Armed Forces occupying comparable accommodations are charged for such accommodations by the United States). Each such agreement shall be transmitted promptly to the Speaker of the House of Representatives, the Committee on Foreign Affairs of the House of Representatives, and the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate.

(h) Reciprocal quality assurance, inspection, contract administrative services, and contract audit defense services; catalog data and services

(1) The President is authorized to provide (without charge) quality assurance, inspection, contract administration services, and contract audit defense services under this section—

(A) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services entered into after October 29, 1979, by, or under this chapter on behalf of, a foreign government which is a member of the North Atlantic Treaty Organization or the Governments of Australia, New Zealand, Japan, the Republic of Korea, or Israel, if such government provides such services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government; or

(B) in connection with the placement or administration of any contract or subcontract for defense articles, defense services, or design and construction services pursuant to the North Atlantic Treaty Organization Security Investment program in accordance with an agreement under which the foreign governments participating in such program provide such services, without charge, in connection with similar contracts or subcontracts.

(2) In carrying out the objectives of this section, the President is authorized to provide cataloging data and cataloging services, without charge, to the North Atlantic Treaty Organiza-

tion, to any member government of that Organization, or to the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel if that Organization, member government, or the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel provides such data and services in accordance with an agreement on a reciprocal basis, without charge, to the United States Government.

(i) Sales affecting combat readiness of Armed Forces; statement to Congress; limitation on delivery

(1) Sales of defense articles and defense services which could have significant adverse effect on the combat readiness of the Armed Forces of the United States shall be kept to an absolute minimum. The President shall transmit to the Speaker of the House of Representatives, the Committees on Foreign Affairs and Armed Services of the House of Representatives, and the Committees on Armed Services and Foreign Relations of the Senate on the same day a written statement giving a complete explanation with respect to any proposal to sell, under this section or under authority of subchapter II-B, any defense articles or defense services if such sale could have a significant adverse effect on the combat readiness of the Armed Forces of the United States. Each such statement shall be unclassified except to the extent that public disclosure of any item of information contained therein would be clearly detrimental to the security of the United States. Any necessarily classified information shall be confined to a supplemental report. Each such statement shall include an explanation relating to only one such proposal to sell and shall set forth—

- (A) the country or international organization to which the sale is proposed to be made;
- (B) the amount of the proposed sale;
- (C) a description of the defense article or service proposed to be sold;
- (D) a full description of the impact which the proposed sale will have on the Armed Forces of the United States; and
- (E) a justification for such proposed sale, including a certification that such sale is important to the security of the United States.

A certification described in subparagraph (E) shall take effect on the date on which such certification is transmitted and shall remain in effect for not to exceed one year.

(2) No delivery may be made under any sale which is required to be reported under paragraph (1) of this subsection unless the certification required to be transmitted by paragraph¹ (E) of paragraph (1) is in effect.

(j) Repealed. Pub. L. 104-106, div. A, title I, § 112, Feb. 10, 1996, 110 Stat. 206

(k) Effect of sales of excess defense articles on national technology and industrial base

Before entering into the sale under this chapter of defense articles that are excess to the stocks of the Department of Defense, the President shall determine that the sale of such articles will not have an adverse impact on the na-

tional 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.

(l) Repair of defense articles

(1) In general

The President may acquire a repairable defense article from a foreign country or international organization if such defense article—

- (A) previously was transferred to such country or organization under this chapter;
- (B) is not an end item; and
- (C) will be exchanged for a defense article of the same type that is in the stocks of the Department of Defense.

(2) Limitation

The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

- (A)(i) has a requirement for the defense article being returned; and
- (ii) has available sufficient funds authorized and appropriated for such purpose; or
- (B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter; and
- (ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter.

(3) Requirement

(A) The foreign government or international organization receiving a new or repaired defense article in exchange for a repairable defense article pursuant to paragraph (1) shall, upon the acceptance by the United States Government of the repairable defense article being returned, be charged the total cost associated with the repair and replacement transaction.

(B) The total cost charged pursuant to subparagraph (A) shall be the same as that charged the United States Armed Forces for a similar repair and replacement transaction, plus an administrative surcharge in accordance with subsection (e)(1)(A) of this section.

(4) Relationship to certain other provisions of law

The authority of the President to accept the return of a repairable defense article as provided in subsection (a) shall not be subject to chapter 137 of title 10 or any other provision of law relating to the conclusion of contracts.

(m) Return of defense articles

(1) In general

The President may accept the return of a defense article from a foreign country or international organization if such defense article—

- (A) previously was transferred to such country or organization under this chapter;
- (B) is not significant military equipment (as defined in section 2794(9) of this title); and

¹ So in original. Probably should be "subparagraph".

(C) is in fully functioning condition without need of repair or rehabilitation.

(2) Limitation

The President may exercise the authority provided in paragraph (1) only to the extent that the Department of Defense—

(A)(i) has a requirement for the defense article being returned; and

(ii) has available sufficient funds authorized and appropriated for such purpose; or

(B)(i) is accepting the return of the defense article for subsequent transfer to another foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter; and

(ii) has available sufficient funds provided by or on behalf of such other foreign government or international organization pursuant to a letter of offer and acceptance implemented in accordance with this chapter.

(3) Credit for transaction

Upon acquisition and acceptance by the United States Government of a defense article under paragraph (1), the appropriate Foreign Military Sales account of the provider shall be credited to reflect the transaction.

(4) Relationship to certain other provisions of law

The authority of the President to accept the return of a defense article as provided in paragraph (1) shall not be subject to chapter 137 of title 10 or any other provision of law relating to the conclusion of contracts.

(Pub. L. 90-629, ch. 2, §21, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 94-329, title II, §§205, 206, June 30, 1976, 90 Stat. 736, 738; Pub. L. 95-384, §16, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96-92, §12, Oct. 29, 1979, 93 Stat. 705; Pub. L. 96-533, title I, §§102, 103, 105(b)(1), 115(b)(2), Dec. 16, 1980, 94 Stat. 3132, 3134, 3140; Pub. L. 97-113, title I, §§103, 104, Dec. 29, 1981, 95 Stat. 1521; Pub. L. 97-392, §3, Dec. 29, 1982, 96 Stat. 1963; Pub. L. 98-473, title I, §101(1) [title III, §301], Oct. 12, 1984, 98 Stat. 1884, 1895; Pub. L. 99-83, title I, §§107(a), 108-111, Aug. 8, 1985, 99 Stat. 196, 197; Pub. L. 100-202, §101(e) [title V, §580], Dec. 22, 1987, 101 Stat. 1329-131, 1329-181; Pub. L. 100-456, div. A, title X, §1002, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101-165, title IX, §9104(c), Nov. 21, 1989, 103 Stat. 1152; Pub. L. 102-25, title VII, §705(d)(1), Apr. 6, 1991, 105 Stat. 120; Pub. L. 102-484, div. A, title I, §114, Oct. 23, 1992, 106 Stat. 2333; Pub. L. 103-236, title VII, §731(d), Apr. 30, 1994, 108 Stat. 503; Pub. L. 104-106, div. A, title I, §112, div. D, title XLIII, §4303(a), Feb. 10, 1996, 110 Stat. 206, 658; Pub. L. 104-164, title I, §§104(b)(1), 112(c)(2), 147(a)(3)(A), (b), 152(a), (b), July 21, 1996, 110 Stat. 1426, 1428, 1435, 1438, 1439; Pub. L. 104-201, div. B, title XXVIII, §2802(d)(2), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1222], Nov. 29, 1999, 113 Stat. 1536, 1501A-498; Pub. L. 109-102, title V, §534(l)(1), (2), Nov. 14, 2005, 119 Stat. 2211; Pub. L. 110-429, title II, §203(b)(1), (3), (4), Oct. 15, 2008, 122 Stat. 4845; Pub. L. 111-266, title III, §301(1), Oct. 8, 2010, 124 Stat. 2804; Pub. L. 113-66, div. A, title XII, §1250(b), Dec. 26, 2013, 127 Stat. 926; Pub. L. 113-276, title II, §208(a)(1), (2), Dec. 18, 2014, 128

Stat. 2992, 2993; Pub. L. 115-232, div. A, title XII, §1279(b), Aug. 13, 2018, 132 Stat. 2072.)

REFERENCES IN TEXT

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

The Foreign Assistance Act of 1961, referred to in subsecs. (a)(1)(C) and (c)(2), 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. Chapter 5 of part II of such Act is classified generally to part V of subchapter II (§2347 et seq.) of chapter 32 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.

Section 814 of the act of October 7, 1975 (Public Law 94-106), referred to in subsec. (g), is not classified to the Code.

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 102 of S. 2346, Ninety-eighth Congress, as introduced in the Senate Feb. 27, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

2018—Subsec. (e)(3)(A). Pub. L. 115-232, §1279(b)(1)(A), substituted “North Atlantic Treaty Organization (NATO) Support and Procurement Organization” for “North Atlantic Treaty Organization (NATO) Support Organization” in introductory provisions.

Subsec. (e)(3)(A)(i). Pub. L. 115-232, §1279(b)(1)(B), substituted “support or procurement partnership agreement” for “support partnership agreement”.

Subsec. (e)(3)(C)(i). Pub. L. 115-232, §1279(b)(2), in introductory provisions, substituted “support or procurement partnership agreement” for “weapon system partnership agreement” and “North Atlantic Treaty Organization (NATO) Support and Procurement Organization” for “North Atlantic Treaty Organization (NATO) Support Organization”.

2014—Subsec. (g). 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. (i)(1). Pub. L. 113-276, §208(a)(2), inserted “, the Committees on Foreign Affairs and Armed Services of the House of Representatives,” after “the Speaker of the House of Representatives” in introductory provisions.

2013—Subsec. (e)(3)(A). Pub. L. 113-66, §1250(b)(1), substituted “North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies” for “Maintenance and Supply Agency of the North Atlantic Treaty Organization” in introductory provisions.

Subsec. (e)(3)(A)(i). Pub. L. 113-66, §1250(b)(2), substituted “support partnership agreement” for “weapon system partnership agreement”.

Subsec. (e)(3)(C)(i). Pub. L. 113-66, §1250(b)(1), substituted “North Atlantic Treaty Organization (NATO) Support Organization and its executive agencies” for “Maintenance and Supply Agency of the North Atlantic Treaty Organization” in introductory provisions.

Subsec. (e)(3)(C)(i)(II). Pub. L. 113-66, §1250(b)(3), substituted “activities” for “a specific weapon system”.

2010—Subsec. (e)(2)(A). Pub. L. 111-266 inserted “Israel,” before “or New Zealand”.

2008—Subsec. (e)(2)(A). Pub. L. 110-429, §203(b)(1), inserted “the Republic of Korea,” before “or New Zealand”.

Subsec. (h)(1)(A). Pub. L. 110-429, §203(b)(3), inserted “the Republic of Korea,” before “or Israel”.

Subsec. (h)(2). Pub. L. 110-429, §203(b)(4), substituted “, to any member government of that Organization, or

to the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel if that Organization, member government, or the Governments of the Republic of Korea, Australia, New Zealand, Japan, or Israel” for “or to any member government of that Organization if that Organization or member government”.

2005—Subsec. (h)(1)(A). Pub. L. 109-102, § 534(l)(1), inserted “or the Governments of Australia, New Zealand, Japan, or Israel” after “North Atlantic Treaty Organization”.

Subsec. (h)(2). Pub. L. 109-102, § 534(l)(2), which directed the substitution of “, to any member of that Organization, or to the Governments of Australia, New Zealand, Japan, or Israel if that Organization, member government, or the Governments of Australia, New Zealand, Japan, or Israel” for “or to any member government that Organization if that Organization or member government”, could not be executed because the phrase “or to any member government that Organization if that Organization or member government” does not appear in text.

1999—Subsec. (a)(1). Pub. L. 106-113 inserted “and the Coast Guard” after “Department of Defense” in introductory provisions.

1996—Subsec. (a)(1)(C). Pub. L. 104-164, § 112(c)(2), inserted “or to any high-income foreign country (as described in that chapter)”.

Subsec. (e)(2). Pub. L. 104-106, § 4303(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (g). Pub. L. 104-164, § 147(a)(3)(A), (b), substituted “similar agreements with countries” for “similar agreements with Japan, Australia, and New Zealand, and with other countries” in first sentence and struck out at end “As used in this subsection, the term ‘major non-NATO allies’ means those countries designated as major non-NATO allies for purposes of section 2350a(i)(3) of title 10.”

Subsec. (h)(1)(B). Pub. L. 104-201 substituted “Security Investment program” for “Infrastructure Program”.

Subsec. (j). Pub. L. 104-106, § 112, struck out heading and text of subsec. (j). Text read as follows:

“(1) Funds received from the sale of tanks under this section shall be available for the upgrading of tanks for fielding to the Army.

“(2) Funds received from the sale of infantry fighting vehicles or armored personnel carriers under this section shall be available for the upgrading of infantry fighting vehicles or armored personnel carriers for fielding to the Army.

“(3) Paragraphs (1) and (2) apply only to the extent provided in advance in appropriations Acts.

“(4) This subsection applies with respect to funds received from sales occurring after September 30, 1989.”

Subsec. (k). Pub. L. 104-164, § 104(b)(1), substituted “the President shall determine that the sale 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.” for “the President shall first consider the effects of the sale of the articles on the national technology and industrial base, particularly the extent, if any, to which the sale reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the excess defense articles are sold.”

Subsec. (l). Pub. L. 104-164, § 152(a), added subsec. (l).
Subsec. (m). Pub. L. 104-164, § 152(b), added subsec. (m).

1994—Subsec. (k). Pub. L. 103-236 added subsec. (k).
1992—Subsec. (j). Pub. L. 102-484 added subsec. (j).

1991—Subsec. (g). Pub. L. 102-25 substituted “section 2350a(i)(3) of title 10” for “section 2767a of this title”.

1989—Subsec. (e)(1)(A). Pub. L. 101-165, § 9104(c)(1), inserted reference to section 2792(b) and (c) of this title.

Subsec. (e)(1)(B). Pub. L. 101-165, § 9104(c)(2), (3), redesignated subpar. (C) as (B) and inserted exception for

equipment wholly paid for from funds transferred under the Foreign Assistance Act of 1961 or from funds made available under section 2763 of this title. Former subpar. (B), which included charges for any use of plant and production equipment in connection with defense articles, was struck out.

Subsec. (e)(1)(C), (D). Pub. L. 101-165, § 9104(c)(3), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (e)(2). Pub. L. 101-165, § 9104(c)(4), substituted reference to par. (1)(B) for reference to pars. (1)(B) and (1)(C).

1988—Subsec. (e)(3). Pub. L. 100-456 added par. (3).
1987—Subsec. (g). Pub. L. 100-202 inserted “and with other countries which are major non-NATO allies,” after “New Zealand,” and inserted last sentence defining “major non-NATO allies”.

1985—Subsec. (a)(1). Pub. L. 99-83, § 107(a)(1), (2), designated existing provisions as par. (1), and substituted “(A)”, “(B)”, and “(C)” for “(1)”, “(2)”, and “(3)”, respectively.

Subsec. (a)(1)(C). Pub. L. 99-83, § 108(a), inserted provisions relating to training sold to a purchaser receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

Subsec. (a)(2). Pub. L. 99-83, § 107(a)(3), added par. (2).

Subsec. (e)(1)(A). Pub. L. 99-83, § 109, inserted provisions excluding pro rata share of fixed base operation costs.

Subsec. (g). Pub. L. 99-83, § 108(b), added subsec. (g).

Subsec. (h)(1). Pub. L. 99-83, §§ 110, 111(1), (2), designated existing provisions as par. (1), inserted applicability to contract administrative services, and substituted “(A)” and “(B)” for “(1)” and “(2)”, respectively.

Subsec. (h)(2). Pub. L. 99-83, § 111(3), added par. (2).

1984—Subsec. (a)(3). Pub. L. 98-473 struck out “sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961” after “in the case of training”.

Subsec. (g). Pub. L. 98-473 struck out subsec. (g) which related to NATO standardization agreements and similar agreements with Japan, Australia, and New Zealand.

1982—Subsec. (i)(1). Pub. L. 97-392 inserted reference to proposals to sell under the authority of subchapter II-B.

1981—Subsec. (c)(2). Pub. L. 97-113, § 103, substituted provision for a report within forty-eight hours of existence of or change in status of significant hostilities or terrorist acts or series of such acts, which may endanger American lives or property for provision for a report within 48 hours after outbreak of significant hostilities and omitted provision for statement of relation between the defense services and hostilities in the country, the location and precise nature of personnel activities, and likelihood of personnel engagement in the hostilities.

Subsec. (e)(2). Pub. L. 97-113, § 104, authorized reduction or waiver of charges for use and nonrecurring research, development, and production costs respecting sales significantly advancing United States interests in standardization with Armed Forces of Japan, Australia, or New Zealand in furtherance of the mutual defense treaties between the United States and those countries.

1980—Subsec. (a)(3). Pub. L. 96-533, § 115(b)(2), included payment, in case of training sold to a purchaser currently receiving international military education and training assistance, of additional costs incurred by the United States Government in furnishing the training.

Subsec. (c). Pub. L. 96-533, § 102, designated existing provision as par. (1), substituted “training and advising that may engage United States personnel in combat activities” for “training, advising, or otherwise providing assistance regarding combat activities”, and added par. (2).

Subsec. (g). Pub. L. 96-533, § 103, authorized the President to enter into standardization agreements with Japan, Australia, and New Zealand.

Subsec. (h). Pub. L. 96-533, §105(b)(1), substituted “defense articles, defense services, or design and construction services” for “defense articles or defense services” in two places.

1979—Subsecs. (h), (i). Pub. L. 96-92 added subsec. (h) and redesignated former subsec. (h) as (i).

1978—Subsec. (e)(1)(D). Pub. L. 95-384 added subpar. (D).

1976—Subsec. (a). Pub. L. 94-329, §205, designated existing provisions as subsec. (a) and substituted provisions authorizing President to sell defense articles and defense services from Department of Defense stocks to eligible countries and international organizations who agree to pay specified values for such articles and services in United States dollars, for provisions requiring that payment for defense articles and defense services from stocks be made in advance, or if in the best interest of the United States as determined by the President, within a reasonable period not to exceed 120 days after delivery of the articles or rendering of the services.

Subsecs. (b) to (h). Pub. L. 94-329, §§205, 206, added subsecs. (b) to (h).

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. D, title XLIII, §4303(b)-(d), Feb. 10, 1996, 110 Stat. 659, provided that:

“(b) CONDITIONS.—Subsection (a) [amending this section] shall be effective only if—

“(1) the President, in the budget of the President for fiscal year 1997, proposes legislation that if enacted would be qualifying offsetting legislation; and

“(2) there is enacted qualifying offsetting legislation.

“(c) EFFECTIVE DATE.—If the conditions in subsection (b) are met, then the amendments made by subsection (a) shall take effect on the date of the enactment of qualifying offsetting legislation [Sept. 23, 1996].

“(d) DEFINITIONS.—For purposes of this section:

“(1) The term ‘qualifying offsetting legislation’ means legislation that includes provisions that—

“(A) offset fully the estimated revenues lost as a result of the amendments made by subsection (a) for each of the fiscal years 1997 through 2005;

“(B) expressly state that they are enacted for the purpose of the offset described in subparagraph (A); and

“(C) are included in full on the PayGo scorecard.

“(2) The term ‘PayGo scorecard’ means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 902(d)].”

[Qualifying offsetting legislation was enacted by Pub. L. 104-201, §3303, listed in a Materials in the National Defense Stockpile table under section 98d of Title 50, War and National Defense.]

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

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

REGULATIONS

Pub. L. 104-164, title I, §152(c), July 21, 1996, 110 Stat. 1439, provided that: “Under the direction of the President, the Secretary of Defense shall promulgate regulations to implement subsections (l) and (m) of section 21 of the Arms Export Control Act [22 U.S.C. 2761(l), (m)], as added by this section.”

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 certain functions of the President under this section, see section 1(c) 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.

NOTIONAL MILESTONES AND STANDARD TIMELINES FOR CONTRACTS FOR FOREIGN MILITARY SALES

Pub. L. 115-91, div. A, title VIII, §887, Dec. 12, 2017, 131 Stat. 1506, provided that:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—The Secretary of Defense shall establish specific notional milestones and standard timelines for the Department of Defense to achieve such milestones in its processing of a foreign military sale (as authorized under chapter 2 of the Arms Export Control Act (22 U.S.C. 2761 et seq.)). Such milestones and timelines—

“(A) may vary depending on the complexity of the foreign military sale; and

“(B) shall cover the period beginning on the date of receipt of a complete letter of request (as described in chapter 5 of the Security Assistance Management Manual of the Defense Security Cooperation Agency) from a foreign country and ending on the date of the final delivery of a defense article or defense service sold through the foreign military sale.

“(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary shall submit to the appropriate committees of Congress a report describing the milestones and timelines developed pursuant to paragraph (1) of this section.

“(b) SUBMISSIONS TO CONGRESS.—

“(1) QUARTERLY NOTIFICATION.—During the period beginning 180 days after the date of the enactment of this Act and ending on December 31, 2021, the Secretary shall submit to the appropriate committees of Congress, on a quarterly basis, a report that includes a list of each foreign military sale with a value greater than or equal to the dollar threshold for congressional notification under section 36 of the Arms Export Control Act (22 U.S.C. 2776)—

“(A) for which the final delivery of a defense article or defense service has not been completed; and

“(B) that has not met a standard timeline to achieve a notional milestone as established under subsection (a).

“(2) ANNUAL REPORT.—Not later than November 1, 2019, and annually thereafter until December 31, 2021, the Secretary shall submit to the appropriate committees of Congress a report that summarizes—

“(A) the number, set forth separately by dollar value and notional milestone, of foreign military sales that met the standard timeline to achieve a notional milestone established under subsection (a) during the preceding fiscal year; and

“(B) the number, set forth separately by dollar value and notional milestone, of each foreign military sale that did not meet the standard timeline to achieve a notional milestone established under subsection (a), and a description of any extenuating factors explaining why such a sale did not achieve such milestone.

“(c) DEFINITIONS.—In this section—

“(1) the terms ‘defense article’ and ‘defense service’ have the meanings given those terms, respectively, in

section 47 of the Arms Export Control Act (22 U.S.C. 2794); and

“(2) the term ‘appropriate committees of Congress’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

“(B) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.”

INTERNATIONAL SALES PROCESS IMPROVEMENTS

Pub. L. 114-328, div. A, title XII, §1297, Dec. 23, 2016, 130 Stat. 2563, provided that:

“(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall develop a plan to improve the management and use of fees collected on transfer of defense articles and services via sale, lease, or grant to international customers under programs over which the Defense Security Cooperation Agency has administration responsibilities. The plan shall include options to use fees more effectively—

“(1) to improve the staffing and processes of the licensing review cycle at the Defense Technology Security Administration and other reviewing authorities; and

“(2) to maintain a cadre of contracting officers and acquisition officials who specialize in foreign military sales contracting.

“(b) PROCESS FOR GATHERING INPUT.—The Secretary of Defense shall establish a process for contractors to provide input, feedback, and adjudication of any differences regarding the appropriateness of governmental pricing and availability estimates prior to the delivery to potential foreign customers of formal responses to Letters of Request for Pricing and Availability.”

§ 2762. Procurement for cash sales

(a) Authority of President; dependable undertaking by foreign country or international organization; interest rates

Except as otherwise provided in this section, the President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the procurement of defense articles or defense services for sale for United States dollars to any foreign country or international organization if such country or international organization provides the United States Government with a dependable undertaking (1) to pay the full amount of such contract which will assure the United States Government against any loss on the contract, and (2) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract, and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(b) Issuance of letters of offer under emergency determination; availability of appropriations for payment

The President may, if he determines it to be in the national interest, issue letters of offer under this section which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within one hundred and twenty days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this chapter. Appropriations available to the Department of Defense may be used to meet the payments required by the contracts for the procurement of defense articles and defense services and shall be reimbursed by the amounts subsequently received from the country or international organization to whom articles or services are sold.

(c) Applicability of Renegotiation Act of 1951

The provisions of the Renegotiation Act of 1951 do not apply to procurement contracts heretofore or hereafter entered into under this section, section 2769 of this title, or predecessor provisions of law.

(d) Competitive pricing

(1) Procurement contracts made in implementation of sales under this section for defense articles and defense services wholly paid for from funds made available on a nonrepayable basis shall be priced on the same costing basis with regard to profit, overhead, independent research and development, bid and proposal, and other costing elements, as is applicable to procurements of like items purchased by the Department of Defense for its own use.

(2) Direct costs associated with meeting additional or unique requirements of the purchaser shall be allowable under contracts described in paragraph (1). Loadings applicable to such direct costs shall be permitted at the same rates applicable to procurement of like items purchased by the Department of Defense for its own use.

(Pub. L. 90-629, ch. 2, §22, Oct. 22, 1968, 82 Stat. 1323; Pub. L. 93-189, §25(3), Dec. 17, 1973, 87 Stat. 730; Pub. L. 94-329, title II, §207, June 30, 1976, 90 Stat. 738; Pub. L. 95-384, §17, Sept. 26, 1978, 92 Stat. 740; Pub. L. 96-533, title I, §105(b)(2), Dec. 16, 1980, 94 Stat. 3134; Pub. L. 104-107, title V, §531A(a), Feb. 12, 1996, 110 Stat. 731; Pub. L. 106-113, div. B, §1000(a)(7) [div. B, title XII, §1223], Nov. 29, 1999, 113 Stat. 1536, 1501A-498.)

REFERENCES IN TEXT

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

The Renegotiation Act of 1951, referred to in subsec. (c), is act Mar. 23, 1951, ch. 15, 65 Stat. 7, as amended,