

§ 2313. Transferred**Editorial Notes**

CODIFICATION

Section, Pub. L. 87-195, pt. II, §505(a), (b), Sept. 4, 1961, 75 Stat. 436, as amended, was renumbered §§502, 507(c) of Pub. L. 87-195 by Pub. L. 90-137, pt. II, §201(d)(1), (l), Nov. 14, 1967, 81 Stat. 456, 457, and transferred to sections 2302 and 2319 of this title.

§ 2314. Furnishing of defense articles or related training or other defense service on grant basis**(a) Conditions of eligibility**

In addition to such other provisions as the President may require, no defense articles or related training or other defense service shall be furnished to any country on a grant basis unless it shall have agreed that—

(1) it will not, without the consent of the President—

(A) permit any use of such articles or related training or other defense service by anyone not an officer, employee, or agent of that country,

(B) transfer, or permit any officer, employee, or agent of that country to transfer such articles or related training or other defense service by gift, sale, or otherwise, or

(C) use or permit the use of such articles or related training or other defense service for purposes other than those for which furnished;

(2) it will maintain the security of such articles or related training or other defense service, and will provide substantially the same degree of security protection afforded to such articles or related training or other defense service by the United States Government;

(3) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such articles or related training or other defense service; and

(4) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, such articles or related training or other defense service which are no longer needed for the purposes for which furnished.

(b) Limitation on amount; exceptions

No defense articles shall be furnished on a grant basis to any country at a cost in excess of \$3,000,000 in any fiscal year unless the President determines—

(1) that such country conforms to the purposes and principles of the Charter of the United Nations;

(2) that such defense articles will be utilized by such country for the maintenance of its own defensive strength, or the defensive strength of the free world;

(3) that such country is taking all reasonable measures, consistent with its political and economic stability, which may be needed to develop its defense capacities; and

(4) that the increased ability of such country to defend itself is important to the security of the United States.

(c) Reduction and termination of grants to countries able to maintain adequate military forces without undue economic strain

The President shall regularly reduce and, with such deliberate speed as orderly procedure and other relevant considerations, including prior commitments, will permit, shall terminate all further grants of military equipment and supplies to any country having sufficient wealth to enable it, in the judgment of the President, to maintain and equip its own military forces at adequate strength, without undue burden to its economy.

(d) Termination of assistance; report of violation by President; conditions for reinstatement

(1) Assistance and deliveries of assistance under this part to any country shall be terminated as hereinafter provided, if such country uses defense articles or defense services furnished under this chapter, the Mutual Security Act of 1954, or any predecessor Foreign Assistance Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act (A) by using such articles or services for a purpose not authorized under section 2302 of this title or, if such agreement provides that such articles or services may only be used for purposes more limited than those authorized under section 2302 of this title, for a purpose not authorized under such agreement; (B) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President; or (C) by failing to maintain the security of such articles or services.

(2)(A) Assistance and deliveries of assistance shall be terminated pursuant to paragraph (1) of this subsection if the President so determines and so states in writing to the Congress, or if the Congress so finds by joint resolution.

(B) The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred.

(3) Assistance to a country shall remain terminated in accordance with paragraph (1) of this subsection until such time as—

(A) the President determines that the violation has ceased; and

(B) the country concerned has given assurances satisfactory to the President that such violation will not recur.

(4) The authority contained in section 2364(a) of this title may not be used to waive the provisions of this section with respect to further assistance under this part.

(e) Consent by President to transfer

In considering a request for approval of any transfer of any weapon, weapons system, munitions, aircraft, military boat, military vessel, or other implement of war to another country, the President shall not give his consent under subsection (a)(1) or (a)(4) to the transfer unless the

United States itself would transfer the defense article under consideration to that country. In addition, the President shall not give his consent under subsection (a)(1) or (a)(4) to the transfer of any significant defense articles on the United States Munitions List unless the foreign country requesting consent to transfer agrees to demilitarize such defense articles prior to transfer, or the proposed recipient foreign country provides a commitment in writing to the United States Government that it will not transfer such defense articles, if not demilitarized, to any other foreign country or person without first obtaining the consent of the President.

(f) Disposition of defense articles furnished on a grant basis; net proceeds to be paid over to the United States

Effective July 1, 1974, no defense article shall be furnished to any country on a grant basis unless such country shall have agreed that the net proceeds of sale received by such country in disposing of any weapon, weapons system, munition, aircraft, military boat, military vessel, or other implement of war received under this part will be paid to the United States Government and shall be available to pay all official costs of the United States Government payable in the currency of that country, including all costs relating to the financing of international educational and cultural exchange activities in which that country participates under the programs authorized by the Mutual Educational and Cultural Exchange Act of 1961 [22 U.S.C. 2451 et seq.]. In the case of items which were delivered prior to 1985, the President may waive the requirement that such net proceeds be paid to the United States Government if he determines that to do so is in the national interest of the United States.

(g) Discrimination on basis of race, religion, national origin, or sex prohibited

(1) It is the policy of the United States that no assistance under this part should be furnished to any foreign country, the laws, regulations, official policies, or governmental practices of which prevent any United States person (as defined in section 7701(a)(30) of title 26) from participating in the furnishing of defense articles or defense services under this part on the basis of race, religion, national origin, or sex.

(2)(A) No agency performing functions under this part shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based upon race, religion, national origin, or sex.

(B) Each contract entered into by any such agency for the performance of any function under this part shall contain a provision to the effect that no person, partnership, corporation, or other entity performing functions pursuant to such contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are

based upon race, religion, national origin, or sex.

(3) The President shall promptly transmit reports to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate concerning any transaction in which any United States person (as defined in section 7701(a)(30) of title 26) is prevented by a foreign government on the basis of race, religion, national origin, or sex, from participating in the furnishing of assistance under this part, or education and training under part V of this subchapter, to any foreign country. Such reports shall include (A) a description of the facts and circumstances of any such discrimination, (B) the response thereto on the part of the United States or any agency or employee thereof, and (C) the result of such response, if any.

(4)(A) Upon the request of the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, the President shall, within 60 days after receipt of such request, transmit to both such committees a statement, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor, with respect to the country designated in such request, setting forth—

(i) all the available information about the exclusionary policies or practices of the government of such country when such policies or practices are based upon race, religion, national origin, or sex and prevent any such person from participating in a transaction involving the furnishing of any assistance under this part or any education and training under part V of this subchapter;

(ii) the response of the United States thereto and the results of such response;

(iii) whether, in the opinion of the President, notwithstanding any such policies or practices—

(I) extraordinary circumstances exist which necessitate a continuation of such assistance or education and training transaction, and, if so, a description of such circumstances and the extent to which such assistance or education and training transaction should be continued (subject to such conditions as Congress may impose under this section), and

(II) on all the facts it is in the national interest of the United States to continue such assistance or education and training transaction; and

(iv) such other information as such committee may request.

(B) In the event a statement with respect to an assistance or training transaction is requested pursuant to subparagraph (A) of this paragraph but is not transmitted in accordance therewith within 60 days after receipt of such request, such assistance or training transaction shall be suspended unless and until such statement is transmitted.

(C)(i) In the event a statement with respect to an assistance or training transaction is transmitted under subparagraph (A) of this paragraph, the Congress may at any time thereafter

adopt a joint resolution terminating or restricting such assistance or training transaction.

(ii) Any such 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.

(iii) The term “certification”, as used in section 601 of such Act, means, for the purposes of this paragraph, a statement transmitted under subparagraph (A) of this paragraph.

(Pub. L. 87–195, pt. II, § 505, formerly § 506, Sept. 4, 1961, 75 Stat. 436; Pub. L. 87–565, pt. II, § 201(a), Aug. 1, 1962, 76 Stat. 259; Pub. L. 89–583, pt. II, § 201(b), Sept. 19, 1966, 80 Stat. 803; renumbered § 505, Pub. L. 90–137, pt. II, § 201(e), Nov. 14, 1967, 81 Stat. 456 and amended Pub. L. 92–226, pt. II, § 201(b), (c), Feb. 7, 1972, 86 Stat. 25; Pub. L. 93–189, § 12(b)(3), Dec. 17, 1973, 87 Stat. 721; Pub. L. 94–329, title II, §§ 203(b), 204(b)(2), title III, §§ 302(a), 304(a), June 30, 1976, 90 Stat. 735, 736, 751, 754; Pub. L. 95–105, title I, § 109(a)(4), Aug. 17, 1977, 91 Stat. 846; Pub. L. 99–83, title I, § 123(b), Aug. 8, 1985, 99 Stat. 205; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–513, title III, Nov. 5, 1990, 104 Stat. 1998; Pub. L. 103–236, title I, § 162(e)(2), Apr. 30, 1994, 108 Stat. 405; Pub. L. 103–437, § 9(a)(6), Nov. 2, 1994, 108 Stat. 4588.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(1), was in the original “this Act”, meaning Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Mutual Security Act of 1954, referred to in subsec. (d)(1), is act Aug. 26, 1954, ch. 937, 68 Stat. 832, as amended by acts July 8, 1955, ch. 301, 69 Stat. 283; July 18, 1956, ch. 627, §§ 2–11, 70 Stat. 555; Aug. 14, 1957, Pub. L. 85–141, 71 Stat. 355; June 30, 1958, Pub. L. 85–477, ch. 1, §§ 101–103, ch. II, §§ 201–205, ch. III, § 301, ch. IV, § 401, ch. V, § 501, 72 Stat. 261; July 24, 1959, Pub. L. 86–108, § 2, ch. I, § 101, ch. II, §§ 201–205(a)–(i), (k)–(n), ch. III, § 301, ch. IV, § 401(a)–(k), (m), 73 Stat. 246; May 14, 1960, Pub. L. 86–472, ch. I to V, 74 Stat. 134, which was principally classified to chapter 24 (§ 1750 et seq.) of this title and which was repealed by act July 18, 1956, ch. 627, § 8(m), 70 Stat. 559, Pub. L. 85–141, §§ 2(e) 3, 4(b), 11(d), Aug. 14, 1957, 71 Stat. 356, Pub. L. 86–108, ch. II, §§ 205(j), ch. IV, 401(i), July 24, 1959, 73 Stat. 250, Pub. L. 86–472, ch. II, §§ 203(d), 204(k), May 14, 1960, 74 Stat. 138, Pub. L. 87–195, pt. III, § 642(a)(2), Sept. 4, 1961, 75 Stat. 460, Pub. L. 94–329, title II, § 212(b)(1), June 30, 1976, 90 Stat. 745, Pub. L. 104–127, title II, § 228, Apr. 4, 1996, 110 Stat. 963, except for sections 1754, 1783, 1796, 1853, 1928, and 1937 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1754 of this title and Tables.

The Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (f), is Pub. L. 87–256, Sept. 21, 1961, 5 Stat. 527, as amended, which is classified principally to chapter 33 (§ 2451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

Section 601 of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (g)(4)(C)(ii), is section 601 of Pub. L. 94–329, which was not classified to the Code.

AMENDMENTS

1994—Subsec. (g)(4)(A). Pub. L. 103–437 substituted “Foreign Affairs” for “International Relations” in introductory provisions.

Pub. L. 103–236 substituted “Democracy, Human Rights, and Labor” for “Human Rights and Humanitarian Affairs” in introductory provisions.

1990—Subsec. (f). Pub. L. 101–513 substituted “1985” for “1975” in second sentence.

1986—Subsec. (g)(1), (3). Pub. L. 99–514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1985—Subsec. (f). Pub. L. 99–83 inserted provisions relating to waiver for items delivered prior to 1975.

1977—Subsec. (g)(4)(A). Pub. L. 95–105 substituted “Assistant Secretary of State” for “Coordinator” in provisions preceding cl. (i).

1976—Subsec. (a). Pub. L. 94–329, § 203(b), inserted “or related training or other defense service” after “articles” wherever appearing.

Subsec. (d). Pub. L. 94–329, § 304(a), provided that either the President, by so stating in a writing to Congress, or Congress, by joint resolution, terminate assistance upon determining a violation, specified conditions for reinstatement of assistance, and denied the President the power, where a violation has been determined, of granting assistance on the basis of national security.

Subsec. (e). Pub. L. 94–329, § 204(b)(2), struck out provisions relating to the President’s notification of his consent to transfer war implements to another country, in writing, to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate indicating his justification for the transfer and the particular war implement transferred.

Subsec. (g). Pub. L. 94–329 added subsec. (g).

1973—Subsecs. (e), (f). Pub. L. 93–189 added subsecs. (e) and (f).

1972—Subsec. (b)(2). Pub. L. 92–226, § 201(b), substituted “or” for “and”.

Subsec. (e). Pub. L. 92–226, § 201(c), repealed provisions respecting conditions of eligibility requiring agreements for use of foreign currencies from sale of surplus commodities for common defense including internal security.

1966—Subsec. (e). Pub. L. 89–583 added subsec. (e).

1962—Subsecs. (c), (d). Pub. L. 87–565 added subsecs. (c) and (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a 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, § 203(b), June 30, 1976, 90 Stat. 735, provided that the amendment made by that section is effective July 1, 1976.

Executive Documents

DELEGATION OF FUNCTIONS

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

§ 2314a. Repealed. Pub. L. 93–189, § 26(4), Dec. 17, 1973, 87 Stat. 731

Section, Pub. L. 91–672, § 9, Jan. 12, 1971, 84 Stat. 2055, related to transfer of defense articles to other countries