

§ 2321i. Overseas management of assistance and sales programs

(a) Assignment of military personnel for performance of enumerated functions

In order to carry out his responsibilities for the management of international security assistance programs conducted under this part, part V of this subchapter, and the Arms Export Control Act [22 U.S.C. 2751 et seq.], the President may assign members of the Armed Forces of the United States to a foreign country to perform one or more of the following functions:

- (1) equipment and services case management;
- (2) training management;
- (3) program monitoring;
- (4) evaluation and planning of the host government's military capabilities and requirements;
- (5) administrative support;
- (6) promoting rationalization, standardization, interoperability, and other defense cooperation measures; and
- (7) liaison functions exclusive of advisory and training assistance.

(b) Furnishing of advisory and training assistance

Advisory and training assistance conducted by military personnel assigned under this section shall be kept to an absolute minimum. It is the sense of the Congress that advising and training assistance in countries to which military personnel are assigned under this section shall be provided primarily by other personnel who are not assigned under this section and who are detailed for limited periods to perform specific tasks.

(c) Number of personnel assigned; waiver; procedures applicable

(1) The number of members of the Armed Forces assigned to a foreign country under this section may not exceed six unless specifically authorized by the Congress. The president may waive this limitation if he determines and reports to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, 30 days prior to the introduction of the additional military personnel, that United States national interests require that more than six members of the Armed Forces be assigned under this section to carry out international security assistance programs in a country not specified in this paragraph. Pakistan, Tunisia, El Salvador, Honduras, Colombia, Indonesia, the Republic of Korea, the Philippines, Thailand, Egypt, Jordan, Morocco, Saudi Arabia, Greece, Portugal, Spain, and Turkey are authorized to have military personnel strengths larger than six under this section to carry out international security assistance programs.

(2) The total number of members of the Armed Forces assigned under this section to a foreign country in a fiscal year may not exceed the number justified to the Congress for that country in the congressional presentation materials for that fiscal year, unless the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Rep-

resentatives are notified 30 days in advance of the introduction of the additional military personnel.

(d) Costs

Effective October 1, 1989, the entire costs (excluding salaries of the United States military personnel other than the Coast Guard) of overseas management of international security assistance programs under this section shall be charged to or reimbursed from funds made available to carry out this part or the Arms Export Control Act [22 U.S.C. 2751 et seq.], other than any such costs which are either paid directly for such defense services under section 21(a) of the Arms Export Control Act [22 U.S.C. 2761(a)] or reimbursed from charges for services collected from foreign governments pursuant to section 21(e) [22 U.S.C. 2761(e)] and section 43(b) [22 U.S.C. 2792(b)] of that Act.

(e) Direction and supervision of assigned personnel

Members of the Armed Forces assigned to a foreign country under this section shall serve under the direction and supervision of the Chief of the United States Diplomatic Mission to that country.

(f) Presidential directive respecting purchase by foreign country of United States-made military equipment

The President shall continue to instruct United States diplomatic and military personnel in the United States missions abroad that they should not encourage, promote, or influence the purchase by any foreign country of United States-made military equipment, unless they are specifically instructed to do so by an appropriate official of the executive branch.

(Pub. L. 87-195, pt. II, §515, as added Pub. L. 93-559, §16, Dec. 30, 1974, 88 Stat. 1799; amended Pub. L. 94-329, title I, §104, June 30, 1976, 90 Stat. 731; Pub. L. 95-92, §7(a), Aug. 4, 1977, 91 Stat. 615; Pub. L. 95-384, §9, Sept. 26, 1978, 92 Stat. 732; Pub. L. 96-92, §7, Oct. 29, 1979, 93 Stat. 703; Pub. L. 96-533, title I, §114, Dec. 16, 1980, 94 Stat. 3139; Pub. L. 97-113, title I, §112, Dec. 29, 1981, 95 Stat. 1527; Pub. L. 99-83, title I, §125, Aug. 8, 1985, 99 Stat. 205; Pub. L. 100-690, title IV, §4305(a), Nov. 18, 1988, 102 Stat. 4273; Pub. L. 101-165, title IX, §9104(a), Nov. 21, 1989, 103 Stat. 1152; Pub. L. 101-167, title III, Nov. 21, 1989, 103 Stat. 1213; Pub. L. 102-391, title V, §556(c), Oct. 6, 1992, 106 Stat. 1675; Pub. L. 104-164, title I, §143, July 21, 1996, 110 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (a)(6). Pub. L. 104-164 struck out “among members of the North Atlantic Treaty Organization and with the Armed Forces of Japan, Australia, and New Zealand” after “defense cooperation measures”.

1992—Subsec. (d). Pub. L. 102-391, which directed the substitution of “(excluding salaries of the United States military personnel other than the Coast Guard)” for “(excluding salaries of the United States military personnel)”, was executed by making the substitution for “(excluding salaries of United States military personnel)”, to reflect the probable intent of Congress.

1989—Subsec. (d). Pub. L. 101-167 inserted “or the Arms Export Control Act” after “this part”.

Pub. L. 101-165 changed effective date from Oct. 1, 1982, to Oct. 1, 1989, and provided that costs would exclude rather than include salaries of U.S. military personnel.

1988—Subsec. (c)(1). Pub. L. 100-690 inserted “Colombia,” after “Honduras.”

1985—Subsec. (c)(1). Pub. L. 99-83 substituted “Pakistan, Tunisia, El Salvador, Honduras” for “For the fiscal year 1982 and the fiscal year 1983”.

1981—Subsec. (a). Pub. L. 97-113 substituted provision authorizing the President to assign members of the Armed Forces of the United States to a foreign country to perform one or more enumerated functions for provision requiring specific Congressional authorization for military assistance groups, etc., to operate in a foreign country, with exception of regular units of the Armed Forces of the United States engaged in routine functions designed to bring about standardization of military operation and procedures between United States forces and defense treaty allies.

Subsec. (b). Pub. L. 97-113 substituted provision directing that advisory and training assistance conducted by military personnel assigned under this section be kept to an absolute minimum for provision authorizing the President to assign military personnel under international security programs to Portugal, Spain, Jordan, the Philippines, the Republic of Korea, Panama, Greece, Turkey, Indonesia, Thailand, Morocco, Egypt, and Saudi Arabia to perform logistics management, transportation, fiscal management, and contract administration of country programs, designated the maximum number assignable, and provided for reimbursement from Saudi Arabia. See subsec. (a) of this section.

Subsec. (c). Pub. L. 97-113 substituted provision designating the maximum number of personnel assignable, waiver of this limitation, and the procedures applicable for provision relating to assignment of military personnel to countries not specified in former subsec. (b) of this section for performance of accounting and other management functions, the maximum number assignable, and an exception to that number if the Chief of the Diplomatic Mission so requests.

Subsec. (d). Pub. L. 97-113 substituted provision directing that, effective Oct. 1, 1982, the entire costs of overseas management of international security assistance programs be charged or reimbursed from funds made available to carry out this part, other than costs paid directly for defense services under section 2761(a) of this title or reimbursed from charges for services collected from foreign governments pursuant to sections 2761(e) and 2792(b) of this title, for provision that the maximum number of members of the Armed Forces assignable for fiscal year 1979 to all countries not exceed 790.

Subsec. (e). Pub. L. 97-113 substituted “under this section” for “under subsection (b) or (c) of this section” and “to that country” for “in that country”.

Subsec. (f). Pub. L. 97-113 redesignated subsec. (h) as (f). Former subsec. (f), relating to performance of management functions by defense attaché’s if that President determined it was the most economic and efficient means of performing those functions, was struck out.

Subsec. (g). Pub. L. 97-113 struck out subsec. (g) which provided that the entire cost of overseas management of international security assistance programs under this section be charged or reimbursed from funds made available to carry out this part, including costs reimbursed from charges for services collected from foreign governments pursuant to sections 2761(e) and 2792(b) of this title, and that the prohibition of former

subsec. (a) of this section and the numerical limitations of former subssecs. (b), (c), and (d) of this section not apply to Armed Forces members performing services for specific purposes and for fixed periods of time on a fully reimbursable basis under section 2761(a) of this title. See subsec. (d) of this section.

Subsec. (h). Pub. L. 97-113 redesignated subsec. (h) as (f).

1980—Subsec. (b)(1). Pub. L. 96-533, §114(1), substituted “fiscal year 1981” for “fiscal year 1980”, substituted “Portugal, Spain, Jordan, the Philippines,” for “the countries specified in section 2312(a) of this title and in”, authorized assignment of military personnel for programs in Egypt, and deleted from the list of countries eligible for such programs Iran and Kuwait.

Subsec. (b)(3). Pub. L. 96-533, §114(2), substituted “assigned to Saudi Arabia” for “assigned to Iran, Kuwait, and Saudi Arabia”, “assigned to such country” for “assigned to such countries” and “assigned to such country exceeds” for “assigned to each such country exceeds”.

Subsec. (f). Pub. L. 96-533, §114(3), substituted “may not exceed six more than the number of defense attachés” for “may not exceed the number of defense attachés” and “December 31, 1979” for “December 31, 1978”, and inserted “such countries and countries to which military personnel have been assigned pursuant to subsection (c) of this section” after “such countries”.

1979—Subsec. (b)(1). Pub. L. 96-92, §7(1), substituted “fiscal year 1980” for “fiscal year 1979” and authorized assignment of military personnel for programs in Greece.

Subsec. (f). Pub. L. 96-92, §7(2), substituted “December 31, 1978” for “December 31, 1977”.

1978—Subsec. (b)(1). Pub. L. 95-384, §9(a), substituted “fiscal year 1979” for “fiscal year 1978” and “Turkey, Indonesia, Thailand” for “Brazil”.

Subsec. (d). Pub. L. 95-384, §9(b), substituted “, including any such members serving on a reimbursable basis pursuant to subsection (b)(3) of this section, may not exceed 790 for the fiscal year 1979” for “may not exceed 865 for the fiscal year 1978”.

Subsec. (f). Pub. L. 95-384, §9(c), substituted “December 31, 1977, except that the President may assign an aggregate total of not to exceed eight additional defense attachés to such countries in order to perform overseas management functions under this subsection” for “December 31, 1976”.

Subsec. (g). Pub. L. 95-384, §9(d), inserted “for fixed” after “for specific purposes and”.

Subsec. (h). Pub. L. 95-384, §9(e), added subsec. (h).

1977—Subsec. (a). Pub. L. 95-92 substituted provisions requiring specific Congressional authorization for a military assistance advisory group, etc., to operate in any foreign country and set forth exceptions to such requirement, for provisions authorizing deductions of expenditures from military assistance appropriations during the period beginning July 1, 1976, and ending Sept. 30, 1977, under section 2312 of this title where under this section reimbursement is requested by the expending government agency or if the available funds are deposited in the Treasury as miscellaneous receipts.

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

Subsec. (c). Pub. L. 95-92 substituted provisions relating to assignment of military personnel to nonspecified countries by President for performance of accounting and other management functions under international security assistance programs, for provisions limiting

after Sept. 30, 1976, the number of military missions and groups to not more than 34.

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

TRANSFER OF FUNCTIONS

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

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.

§ 2321j. Authority to transfer excess defense articles

(a) Authorization

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

(b) Limitations on transfers

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

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

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

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

(D) with respect to a proposed transfer of such articles on a grant basis, such a transfer

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

(E) the President determines that the transfer of such articles will not have an adverse impact on the national technology and industrial base and, particularly, will not reduce the opportunities of entities in the national technology and industrial base to sell new or used equipment to the countries to which such articles are transferred; and

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

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

(c) Terms of transfers

(1) No cost to recipient country

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

(2) Priority

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

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

Section 2392(d) of this title shall not apply with respect to transfers of excess defense articles (including transportation and related costs) under this section.

(e) Transportation and related costs

(1) In general

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

(2) Exception

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

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