

AMENDMENT TO RULES COMM. PRINT 116–19

OFFERED BY MS. SPEIER OF CALIFORNIA

At the appropriate place in title XII of the bill, insert the following new subtitle:

1 **Subtitle __—Return Expenses Paid**
2 **and Yielded Act**

3 **SEC. __1. SHORT TITLE.**

4 This subtitle may be cited as the “Return Expenses
5 Paid and Yielded Act” or “REPAY Act”.

6 **SEC. __2. MODIFICATION OF CERTIFICATION AND REPORT**
7 **REQUIREMENTS RELATING TO SALES OF**
8 **MAJOR DEFENSE EQUIPMENT WITH RESPECT**
9 **TO WHICH NONRECURRING COSTS OF RE-**
10 **SEARCH, DEVELOPMENT, AND PRODUCTION**
11 **ARE WAIVED OR REDUCED UNDER THE ARMS**
12 **EXPORT CONTROL ACT.**

13 (a) CERTIFICATION.—Section 36(b) of the Arms Ex-
14 port Control Act (22 U.S.C. 2776(b)) is amended by add-
15 ing at the end the following:

16 “(7)(A) In the case of any letter of offer to sell any
17 major defense equipment for \$14,000,000 or more, in ad-
18 dition to the other information required to be contained
19 in a certification submitted to the Congress under this

1 subsection, or a similar certification prior to finalization
2 of a letter of offer to sell, each such certification shall in-
3 clude the amount of any charge or charges for the propor-
4 tionate amount of any nonrecurring costs of research, de-
5 velopment, and production of the major defense equipment
6 that was waived or reduced under section 21(e).

7 “(B) Each such certification shall also include infor-
8 mation on—

9 “(i) the type of waiver or reduction;

10 “(ii) the percentage of otherwise obligated non-
11 recurring costs with respect to which the waiver or
12 reduction comprises;

13 “(iii) a justification for issuance of the waiver
14 or reduction;

15 “(iv) in the case of a waiver or reduction made
16 under paragraph (2)(A) of section 21(e)—

17 “(I) the manner in which a sale would sig-
18 nificantly advance standardization with the for-
19 eign countries or international organization de-
20 scribed in such section; and

21 “(II) the extent to which the sale’s signifi-
22 cance should be considered relative to the exist-
23 ing capabilities of the foreign country or inter-
24 national organization and the manner in which
25 the major defense equipment would enhance the

1 capacity of the country or organization in joint
2 operations; and

3 “(v) in the case of a waiver or reduction made
4 under paragraph (2)(B) of section 21(e)—

5 “(I) the military needs and ability to pay
6 of the foreign country or international organiza-
7 tion;

8 “(II) the price and capability of other rel-
9 evant options that are or likely would be consid-
10 ered by the foreign country or international or-
11 ganization for purchase in lieu of the major de-
12 fense equipment described in the letter of offer;
13 and

14 “(III) the previous buying history and ex-
15 isting capabilities of the foreign country or
16 international organization.”.

17 (b) REPORT.—Section 36(a) of the Arms Export
18 Control Act (22 U.S.C. 2776(a)) is amended—

19 (1) in paragraph (11), by striking “and” at the
20 end;

21 (2) in paragraph (12), by striking the period at
22 the end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(13) with respect to requests to waive or re-
25 duce nonrecurring costs with respect to the sale of

1 major defense equipment for \$14,000,000 or more
2 under this Act, a report on—

3 “(A) the total number of such requests
4 that have been approved or denied during the
5 quarter, including the total number of such re-
6 quests that are currently under review and
7 pending a decision; and

8 “(B) for each such request—

9 “(i) an identification of the foreign
10 country or international organization re-
11 questing the waiver or reduction; and

12 “(ii) the total amount of nonrecurring
13 costs to be waived or reduced;

14 “(iii) a description of the major de-
15 fense equipment to be purchased; and

16 “(iv) the justification for the waiver or
17 reduction; and

18 “(C) for each such request that is ap-
19 proved, the actual amount of nonrecurring costs
20 that are waived or reduced that are attributable
21 to quantities of major defense equipment sold
22 under such request.”.

23 (c) REPEAL OF WAIVER AUTHORITY IN CASE OF
24 SALES OF MAJOR DEFENSE EQUIPMENT ALSO BEING
25 PROCURED FOR USE BY UNITED STATES ARMED

1 FORCES.—Section 21(e)(2) of the Arms Export Control
2 Act (22 U.S.C. 2761(e)(2)) is amended—

3 (1) in subparagraph (B)—

4 (A) in the matter preceding clause (i)—

5 (i) by striking “The President” and
6 inserting “Except as provided subpara-
7 graphs (D) and (E), the President”; and

8 (ii) by striking “that—” and all that
9 follows through “(i) imposition” and in-
10 sserting “that imposition”;

11 (B) by striking “sale; or” and inserting
12 “sale.”; and

13 (C) by striking clause (ii); and

14 (2) by inserting at the end the following new
15 subparagraphs:

16 “(D) The President may not waive the charge
17 or charges for a proportionate amount of any non-
18 recurring costs that would otherwise be considered
19 appropriate under paragraph (1)(B) for a particular
20 sale to a country or international organization for a
21 two-year period that begins on any of the following
22 dates:

23 “(i) The date of approval of a waiver
24 under paragraph (1)(B) of a charge or charges
25 that are valued at \$16,000,000 or more under

1 this Act with respect to a sale to the country
2 or organization.

3 “(ii) The date that is the last day of any
4 five-year period in which the country or organi-
5 zation receives 15 or more waivers of a charge
6 or charges under paragraph (1)(B) with respect
7 to sales to the country or organization.

8 “(iii) The date that is the last day of any
9 five-year period in which the country or organi-
10 zation receives waivers of a charge or charges
11 under paragraph (1)(B) that are valued at
12 \$425,000,000 or more under this Act with re-
13 spect to sales to the country or organization.

14 “(E)(i) In the case of any proposed waiver of
15 the charge or charges which would otherwise be con-
16 sidered appropriate under paragraph (1)(B) for a
17 particular sale to a country or international organi-
18 zation of major defense equipment for \$10,000,000
19 or more under this Act, the President shall submit
20 to the Speaker of the House of Representatives, the
21 Committee on Foreign Affairs of the House of Rep-
22 resentatives, and to the chairman of the Committee
23 on Foreign Relations of the Senate a notification
24 with respect to such proposed waiver.

1 “(ii) The President may not waive such charge
2 or charges if Congress, not later than 60 calendar
3 days after receiving such notification, enacts a joint
4 resolution prohibiting the proposed waiver.”.

5 (d) MAXIMUM AGGREGATE AMOUNT OF CHARGES
6 FOR ADMINISTRATIVE SERVICES.—Section 21(e) of the
7 Arms Export Control Act (22 U.S.C. 2761(e)) is amend-
8 ed—

9 (1) in paragraph (1), by inserting “subject to
10 paragraph (4),” before “administrative services”;
11 and

12 (2) by adding at the end the following new
13 paragraph:

14 “(4)(A) For each fiscal year beginning on or
15 after the date of the enactment of the Return Ex-
16 penses Paid and Yielded Act, the President shall—

17 “(i) determine a maximum aggregate
18 amount of charges for administrative services
19 that would be required by paragraph (1)(A)
20 based on the ability of the Department of De-
21 fense to issue and administer letters of offer for
22 sale of defense articles or the sale of defense
23 services pursuant to this section or pursuant to
24 section 22 of this Act; and

1 “(ii) submit to Congress a report that con-
2 tains the determination and specifies the max-
3 imum aggregate amount of charges for adminis-
4 trative services.

5 “(B)(i) Except as provided in clause (ii),
6 charges for administrative services that are required
7 by paragraph (1)(A) may not exceed the maximum
8 aggregate amount of charges for administrative serv-
9 ices determined under subparagraph (A) for the fis-
10 cal year involved.

11 “(ii) The President may waive the requirement
12 of clause (i) on a case-by-case basis if the amount
13 of charges for administrative services that are re-
14 quired by paragraph (1)(A) with respect to a sale of
15 defense articles or a sale of defense services would
16 exceed the maximum aggregate amount of charges
17 for administrative services determined under sub-
18 paragraph (A) for the fiscal year.”.

19 (e) MODIFICATION OF ADMINISTRATIVE EX-
20 PENSES.—

21 (1) IN GENERAL.—Section 43(b) of the Arms
22 Export Control Act (22 U.S.C. 2792(b) is amend-
23 ed—

24 (A) in paragraph (1), by adding “and” at
25 the end;

1 (B) in paragraph (2), by striking “; and”
2 and inserting a period; and

3 (C) by striking paragraph (3).

4 (2) CONFORMING AMENDMENT.—Section
5 21(e)(1)(A) of the Arms Export Control Act (22
6 U.S.C. 2761(e)(1)(A)) is amended by striking “and
7 section 43(c)”.

8 (f) BIENNIAL REVIEW AND MODIFICATION OF USER
9 CHARGES.—

10 (1) IN GENERAL.—Notwithstanding any other
11 provision of law, the Secretary of Defense, acting
12 through the Director of the Defense Security Co-
13 operation Agency, shall, not less than once every two
14 years—

15 (A) carry out a review of user charges
16 under the foreign military sales program and,
17 based on the results of the review, modify the
18 user charges as appropriate; and

19 (B) submit to the appropriate congres-
20 sional committees a report that contains the re-
21 sults of the review carried out under subpara-
22 graph (A) and a description of any user charges
23 that, based on the results of the review, were
24 modified under subparagraph (A).

1 (2) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES DEFINED.—In this subsection, the term “ap-
3 propriate congressional committees” means—

4 (A) the Committee on Armed Services and
5 the Committee on Foreign Affairs of the House
6 of Representatives; and

7 (B) the Committee on Armed Services and
8 the Committee on Foreign Relations of the Sen-
9 ate.

10 **SEC. __3. REVIEW AND REPORT ON USE AND MANAGEMENT**
11 **OF ADMINISTRATIVE SURCHARGES UNDER**
12 **THE FOREIGN MILITARY SALES PROGRAM.**

13 (a) REVIEW.—

14 (1) IN GENERAL.—The Secretary of Defense,
15 acting through the Director of the Defense Security
16 Cooperation Agency, shall review options for expand-
17 ing the use of administrative surcharges under the
18 foreign military sales program, including practices
19 for managing administrative surcharges and con-
20 tract administrative services surcharges.

21 (2) MATTERS TO BE INCLUDED.—The review
22 conducted under paragraph (1) shall include the fol-
23 lowing:

24 (A) A determination of which specific ex-
25 penses are incurred by the United States Gov-

1 ernment in operation of the foreign military
2 sales program that the administrative surcharge
3 does not currently pay for.

4 (B) The estimated annual cost of each of
5 such specific expenses.

6 (C) An assessment of the costs and bene-
7 fits of funding such specific expenses through
8 the administrative surcharge, including any
9 data to support such an assessment.

10 (D) An assessment of how the Department
11 of Defense could calculate an upper bound of a
12 target range for the administrative surcharge
13 account and the contract administration serv-
14 ices surcharge account, including an assessment
15 of the costs and benefits of setting such a
16 bound.

17 (E) An assessment of how the Department
18 of Defense calculates the lower bound, or safety
19 level, for the administrative surcharge account
20 and the contract administration services sur-
21 charge account, including what specific factors
22 inform the calculation and whether such a
23 method for calculating the safety level is still
24 valid or should be revisited.

1 (F) An assessment of the process used by
2 the Department of Defense to review and set
3 rates for the administrative surcharge and the
4 contract administration services surcharge, in-
5 cluding the extent to which outside parties are
6 consulted and any proposals of the Department
7 of Defense may have for better ensuring that
8 the fee rates are set appropriately.

9 (G) Such other matters as the Secretary of
10 Defense determines to be appropriate.

11 (b) REPORT.—Not later than 120 days after the date
12 of the enactment of this Act, the Secretary of Defense,
13 acting through the Director of the Defense Security Co-
14 operation Agency, shall submit to the congressional de-
15 fense committees a report on—

16 (1) the findings of the review conducted under
17 paragraph (1); and

18 (2) any legislative changes needed to allow the
19 surcharge under the foreign military sales program
20 to pay for any expenses currently not covered by ad-
21 ministrative surcharge under the foreign military
22 sales program.

1 **SEC. 4. PERFORMANCE MEASURES TO MONITOR FOR-**
2 **EIGN MILITARY SALES PROGRAM.**

3 (a) IN GENERAL.—The Secretary of Defense, acting
4 through the Director of the Defense Security Cooperation
5 Agency and in consultation with the heads of other rel-
6 evant components of the Department of Defense, shall en-
7 hance the ability of the Department of Defense to monitor
8 the performance of the foreign military sales program by
9 taking the following actions:

10 (1) Develop performance measures to monitor
11 the timeliness of deliveries of defense articles and
12 defense services to purchasers in accordance with
13 the delivery schedule for each sale under the foreign
14 military sales program.

15 (2) Identify key choke points, processes, and
16 tasks that contribute most significantly to delays,
17 shortcomings, and issues in the foreign military sales
18 program.

19 (3) Review existing performance measures for
20 the foreign military sales program to determine
21 whether such measures need to be updated, replaced,
22 or supplemented to ensure that all key aspects of the
23 foreign military sales program's efficiency and serv-
24 ice of United States national interests are able to be
25 monitored and informed by reliable data.

26 (b) REPORT ON PERFORMANCE MEASURES.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of this Act, the Sec-
3 retary of Defense, acting through the Director of the
4 Defense Security Cooperation Agency, shall submit
5 to the appropriate congressional committees a report
6 that lists the performance measures developed and
7 identified under subsection (a).

8 (2) MATTERS TO BE INCLUDED.—The report
9 required by paragraph (1) shall—

10 (A) define the performance measures, in-
11 cluding targets set for the performance meas-
12 ures;

13 (B) identify the data systems used to mon-
14 itor the performance measures;

15 (C) identify any concerns related to the re-
16 liability of the data used to monitor the per-
17 formance measures; and

18 (D) report the results for the performance
19 measures for the most recent fiscal year.

20 (3) PLAN.—If the performance measures devel-
21 oped and identified under subsection (a) cannot be
22 included in the report required by paragraph (1) for
23 the most recent fiscal year based on reliable and ac-
24 cessible data, the report shall include a plan for en-

1 suring that such data will be monitored within a de-
2 fined period of time.

3 (4) UPDATE.—

4 (A) IN GENERAL.—For each fiscal year
5 after the fiscal year in which the report re-
6 quired by subsection (b) is submitted to the ap-
7 propriate congressional committees, the Sec-
8 retary of Defense shall submit to such commit-
9 tees an update of the report required by para-
10 graph (1).

11 (B) MATTERS TO BE INCLUDED.—Each
12 update of the report required by paragraph (1)
13 shall also include the following:

14 (i) For any performance measures
15 that indicate a decreased level of perform-
16 ance from the prior year—

17 (I) a description of the factors
18 that led to such decreased level of per-
19 formance; and

20 (II) plans to improve such level
21 of performance.

22 (ii) For any performance measures
23 that remain unable to be monitored due to
24 lack of reliable and accessible data, an up-

1 date on plans to improve the monitoring of
2 data.

3 (c) BRIEFING.—Not later than 180 days after the
4 date on which the Secretary of Defense, acting through
5 the Director of the Defense Security Cooperation Agency,
6 submits to the appropriate congressional committees the
7 report required by subsection (b), the Comptroller General
8 of the United States shall provide a briefing to such com-
9 mittees on the report, including an evaluation of the per-
10 formance measures developed and identified under sub-
11 section (a).

12 **SEC. 5. REPORT AND BRIEFING ON ADMINISTRATIVE**
13 **BUDGETING OF FOREIGN MILITARY SALES**
14 **PROGRAM.**

15 (a) IN GENERAL.—Not later than one year after the
16 date of the enactment of this Act, the Comptroller General
17 of the United States shall provide a briefing to the con-
18 gressional defense committees and submit to the appro-
19 priate congressional committees a report on the method-
20 ology used by the Department of Defense to determine fu-
21 ture-year needs for administrative surcharges under the
22 foreign military sales program.

23 (b) MATTERS TO BE INCLUDED.—The briefing and
24 report required by subsection (a) shall include the fol-
25 lowing:

1 (1) A description of the methodology the De-
2 partment of Defense used to develop the overall ad-
3 ministrative budget of the foreign military sales pro-
4 gram and the administrative budgets for each other
5 relevant component of the Department of Defense
6 that receives funds from the foreign military sales
7 program.

8 (2) An assessment of the extent to which the
9 methodology described in paragraph (1) reflects rel-
10 evant best practices.

11 (3) Any other related matters the Comptroller
12 General determines to be appropriate.

13 **SEC. __6. TRAINING PROGRAM FOR RELEVANT OFFICIALS**
14 **AND STAFF OF THE DEFENSE SECURITY CO-**
15 **OPERATION AGENCY.**

16 (a) **IN GENERAL.**—The Secretary of Defense, acting
17 through the Director of the Defense Security Cooperation
18 Agency, shall establish and implement a program to pro-
19 vide training to relevant officials and staff of the Defense
20 Security Cooperation Agency for purposes of carrying out
21 this Act and the amendments made by this Act.

22 (b) **REPORT.**—Not later than one year after the date
23 of the enactment of this Act, the Secretary of Defense,
24 acting through the Director of the Defense Security Co-
25 operation Agency, shall submit to the appropriate congres-

1 sional committees a report on the implementation of the
2 program required by subsection (a).

3 **SEC. 7. DEFINITIONS.**

4 In this subtitle:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—Except as otherwise provided, the term “ap-
7 propriate congressional committees” means—

8 (A) the congressional defense committees;
9 and

10 (B) the Committee on Foreign Relations of
11 the Senate and the Committee on Foreign Af-
12 fairs of the House of Representatives.

13 (2) FOREIGN MILITARY SALES PROGRAM.—The
14 term “foreign military sales program” means the
15 program authorized under chapter 2 of the Arms
16 Export Control Act (22 U.S.C. 2761 et seq.).

