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 l—Return Expenses Paid and Yielded Act

3 SEC. __1. SHORT TITLE.

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

6 SEC. __2. MODIFICATION OF CERTIFICATION AND REPORT REQUIREMENTS RELATING TO SALES OF MAJOR DEFENSE EQUIPMENT WITH RESPECT TO WHICH NONRECURRING COSTS OF RESEARCH, DEVELOPMENT, AND PRODUCTION ARE WAIVED OR REDUCED UNDER THE ARMS EXPORT CONTROL ACT.

13 (a) CERTIFICATION.—Section 36(b) of the Arms Export Control Act (22 U.S.C. 2776(b)) is amended by adding at the end the following:

“(7)(A) In the case of any letter of offer to sell any major defense equipment for $14,000,000 or more, in addition to the other information required to be contained in a certification submitted to the Congress under this
subsection, or a similar certification prior to finalization of a letter of offer to sell, each such certification shall include the amount of any charge or charges for the proportionate amount of any nonrecurring costs of research, development, and production of the major defense equipment that was waived or reduced under section 21(e).

“(B) Each such certification shall also include information on—

“(i) the type of waiver or reduction;

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

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

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

“(I) the manner in which a sale would significantly advance standardization with the foreign countries or international organization described in such section; and

“(II) the extent to which the sale’s significance should be considered relative to the existing capabilities of the foreign country or international organization and the manner in which the major defense equipment would enhance the
capacity of the country or organization in joint
operations; and
“(v) in the case of a waiver or reduction made
under paragraph (2)(B) of section 21(e)—
“(I) the military needs and ability to pay
of the foreign country or international organi-
zation;
“(II) the price and capability of other rel-
evant options that are or likely would be consid-
ered by the foreign country or international or-
ganization for purchase in lieu of the major de-
defense equipment described in the letter of offer;
and
“(III) the previous buying history and ex-
isting capabilities of the foreign country or
international organization.”.
(b) REPORT.—Section 36(a) of the Arms Export
Control Act (22 U.S.C. 2776(a)) is amended—
(1) in paragraph (11), by striking “and” at the
end;
(2) in paragraph (12), by striking the period at
the end and inserting “; and”;
(3) by adding at the end the following:
“(13) with respect to requests to waive or re-
duce nonrecurring costs with respect to the sale of
major defense equipment for $14,000,000 or more
under this Act, a report on—

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

“(B) for each such request—

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

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

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

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

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

(e) Repeal of Waiver Authority in Case of
Sales of Major Defense Equipment Also Being
Procured for Use by United States Armed
FORCES.—Section 21(e)(2) of the Arms Export Control Act (22 U.S.C. 2761(e)(2)) is amended—

(1) in subparagraph (B)—

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

(i) by striking “The President” and inserting “Except as provided subparagraphs (D) and (E), the President”; and

(ii) by striking “that—” and all that follows through “(i) imposition” and inserting “that imposition”;

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

(C) by striking clause (ii); and

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

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

“(i) The date of approval of a waiver under paragraph (1)(B) of a charge or charges that are valued at $16,000,000 or more under
this Act with respect to a sale to the country
or organization.

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

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

“(E)(i) In the case of any proposed waiver of
the charge or charges which would otherwise be con-
sidered appropriate under paragraph (1)(B) for a
particular sale to a country or international organi-
zation of major defense equipment for $10,000,000
or more under this Act, the President shall submit
to the Speaker of the House of Representatives, the
Committee on Foreign Affairs of the House of Rep-
resentatives, and to the chairman of the Committee
on Foreign Relations of the Senate a notification
with respect to such proposed waiver.
“(ii) The President may not waive such charge or charges if Congress, not later than 60 calendar days after receiving such notification, enacts a joint resolution prohibiting the proposed waiver.”.

(d) **Maximum Aggregate Amount of Charges for Administrative Services.**—Section 21(e) of the Arms Export Control Act (22 U.S.C. 2761(e)) is amended—

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

and

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

“(4)(A) For each fiscal year beginning on or after the date of the enactment of the Return Expenses Paid and Yielded Act, the President shall—

“(i) determine a maximum aggregate amount of charges for administrative services that would be required by paragraph (1)(A) based on the ability of the Department of Defense to issue and administer letters of offer for sale of defense articles or the sale of defense services pursuant to this section or pursuant to section 22 of this Act; and
“(ii) submit to Congress a report that contains the determination and specifies the maximum aggregate amount of charges for administrative services.

“(B)(i) Except as provided in clause (ii), charges for administrative services that are required by paragraph (1)(A) may not exceed the maximum aggregate amount of charges for administrative services determined under subparagraph (A) for the fiscal year involved.

“(ii) The President may waive the requirement of clause (i) on a case-by-case basis if the amount of charges for administrative services that are required by paragraph (1)(A) with respect to a sale of defense articles or a sale of defense services would exceed the maximum aggregate amount of charges for administrative services determined under subparagraph (A) for the fiscal year.”.

(e) MODIFICATION OF ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—Section 43(b) of the Arms Export Control Act (22 U.S.C. 2792(b) is amended—

(A) in paragraph (1), by adding “and” at the end;
(B) in paragraph (2), by striking “; and” and inserting a period; and
(C) by striking paragraph (3).

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

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

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, shall, not less than once every two years—

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

(B) submit to the appropriate congressional committees a report that contains the results of the review carried out under subparagraph (A) and a description of any user charges that, based on the results of the review, were modified under subparagraph (A).
(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means—

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

(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

SEC. 3. REVIEW AND REPORT ON USE AND MANAGEMENT OF ADMINISTRATIVE SURCHARGES UNDER THE FOREIGN MILITARY SALES PROGRAM.

(a) Review.—

(1) IN GENERAL.—The Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, shall review options for expanding the use of administrative surcharges under the foreign military sales program, including practices for managing administrative surcharges and contract administrative services surcharges.

(2) MATTERS TO BE INCLUDED.—The review conducted under paragraph (1) shall include the following:

(A) A determination of which specific expenses are incurred by the United States Gov-
ernment in operation of the foreign military
sales program that the administrative surcharge
does not currently pay for.

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

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

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

(E) An assessment of how the Department
of Defense calculates the lower bound, or safety
level, for the administrative surcharge account
and the contract administration services sur-
charge account, including what specific factors
inform the calculation and whether such a
method for calculating the safety level is still
valid or should be revisited.
(F) An assessment of the process used by the Department of Defense to review and set rates for the administrative surcharge and the contract administration services surcharge, including the extent to which outside parties are consulted and any proposals of the Department of Defense may have for better ensuring that the fee rates are set appropriately.

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

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, shall submit to the congressional defense committees a report on—

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

(2) any legislative changes needed to allow the surcharge under the foreign military sales program to pay for any expenses currently not covered by administrative surcharge under the foreign military sales program.
SEC. 4. PERFORMANCE MEASURES TO MONITOR FOREIGN MILITARY SALES PROGRAM.

(a) IN GENERAL.—The Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency and in consultation with the heads of other relevant components of the Department of Defense, shall enhance the ability of the Department of Defense to monitor the performance of the foreign military sales program by taking the following actions:

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

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

(3) Review existing performance measures for the foreign military sales program to determine whether such measures need to be updated, replaced, or supplemented to ensure that all key aspects of the foreign military sales program’s efficiency and service of United States national interests are able to be monitored and informed by reliable data.

(b) REPORT ON PERFORMANCE MEASURES.—
(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, shall submit to the appropriate congressional committees a report that lists the performance measures developed and identified under subsection (a).

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

(A) define the performance measures, including targets set for the performance measures;

(B) identify the data systems used to monitor the performance measures;

(C) identify any concerns related to the reliability of the data used to monitor the performance measures; and

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

(3) PLAN.—If the performance measures developed and identified under subsection (a) cannot be included in the report required by paragraph (1) for the most recent fiscal year based on reliable and accessible data, the report shall include a plan for en-
suring that such data will be monitored within a defined period of time.

(4) UPDATE.—

(A) IN GENERAL.—For each fiscal year after the fiscal year in which the report required by subsection (b) is submitted to the appropriate congressional committees, the Secretary of Defense shall submit to such committees an update of the report required by paragraph (1).

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

(i) For any performance measures that indicate a decreased level of performance from the prior year—

(I) a description of the factors that led to such decreased level of performance; and

(II) plans to improve such level of performance.

(ii) For any performance measures that remain unable to be monitored due to lack of reliable and accessible data, an up-
date on plans to improve the monitoring of data.

(c) Briefing.—Not later than 180 days after the date on which the Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, submits to the appropriate congressional committees the report required by subsection (b), the Comptroller General of the United States shall provide a briefing to such committees on the report, including an evaluation of the performance measures developed and identified under subsection (a).

SEC. 5. REPORT AND BRIEFING ON ADMINISTRATIVE BUDGETING OF FOREIGN MILITARY SALES PROGRAM.

(a) In General.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall provide a briefing to the congressional defense committees and submit to the appropriate congressional committees a report on the methodology used by the Department of Defense to determine future-year needs for administrative surcharges under the foreign military sales program.

(b) Matters To Be Included.—The briefing and report required by subsection (a) shall include the following:
(1) A description of the methodology the Department of Defense used to develop the overall administrative budget of the foreign military sales program and the administrative budgets for each other relevant component of the Department of Defense that receives funds from the foreign military sales program.

(2) An assessment of the extent to which the methodology described in paragraph (1) reflects relevant best practices.

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

SEC. 6. TRAINING PROGRAM FOR RELEVANT OFFICIALS AND STAFF OF THE DEFENSE SECURITY CO-OPERATION AGENCY.

(a) IN GENERAL.—The Secretary of Defense, acting through the Director of the Defense Security Cooperation Agency, shall establish and implement a program to provide training to relevant officials and staff of the Defense Security Cooperation Agency for purposes of carrying out this Act and the amendments made by this Act.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense, acting through the Director of the Defense Security Co-operation Agency, shall submit to the appropriate congres-
sional committees a report on the implementation of the
program required by subsection (a).

SEC. _7._ DEFINITIONS.

In this subtitle:

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

(A) the congressional defense committees;

and

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

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