AMENDMENT TO RULES COMM. PRINT 115–70
OFFERED BY MS. SPEIER OF CALIFORNIA

At the appropriate place in title XII, insert the following new section:

SEC. 12. 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.

(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, each such certification shall include the value 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 an 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 organization;

“(II) the price and capability of other relevant options that are or likely would be considered by the foreign country or international organization for purchase in lieu of the major defense equipment described in the letter of offer; and

“(III) the previous buying history and existing 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”; and

(3) by adding at the end the following:

“(13) with respect to requests to waive or reduce 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 requests 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 requesting the waiver or reduction; and

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

“(iii) a description of the major defense equipment to be purchased; and

“(iv) the justification for the waiver or reduction.

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

(c) 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 organization receives waivers of a charge or charges under paragraph (1)(B) that are valued at $425,000,000 or more under this Act with respect 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 considered appropriate under paragraph (1)(B) for a particular sale to a country or international organization 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 Representatives, 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 30 calendar days after receiving such notification, enacts a joint resolution prohibiting the proposed waiver.”.
(d) Review and Report on Use and Management of Administrative Surcharge Under the Foreign Military Sales Program.—

(1) Review.—

(A) In General.—The Director of the Defense Security Cooperation Agency shall review options for expanding the use of the administrative surcharge under the foreign military sales program, including practices for managing the administrative surcharge and the contract administrative services surcharge.

(B) Matters to be Included.—The review conducted under subparagraph (A) shall include the following:

(i) A determination of which specific expenses are incurred by the United States Government in operation of the Foreign Military Sales program that the administrative surcharge does not currently pay for.

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

(iii) An assessment of the costs and benefits of funding such specific expenses through the administrative surcharge, in-
cluding any data to support such an assessment.

(iv) An assessment of how the Defense Security Cooperation Agency could calculate an upper bound of a target range for the administrative surcharge account and the contract administration services surcharge account, including an assessment of the costs and benefits of setting such a bound.

(v) An assessment of how the Defense Security Cooperation Agency calculates the lower bound, or safety level, for the administrative surcharge account and the contract administration services surcharge 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.

(vi) An assessment of the process used by the Defense Security Cooperation Agency 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 the Director may have for better ensuring that the fee rates are set appropriately.

(vii) Such other matters as the Director of the Defense Security Cooperation Agency determines to be appropriate.

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

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

(B) 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.

(3) FOREIGN MILITARY SALES PROGRAM DEFINED.—In this subsection, 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.)