

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:

1 **SEC. 12__ . MODIFICATION OF CERTIFICATION AND REPORT**
2 **REQUIREMENTS RELATING TO SALES OF**
3 **MAJOR DEFENSE EQUIPMENT WITH RESPECT**
4 **TO WHICH NONRECURRING COSTS OF RE-**
5 **SEARCH, DEVELOPMENT, AND PRODUCTION**
6 **ARE WAIVED OR REDUCED UNDER THE ARMS**
7 **EXPORT CONTROL ACT.**

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

11 “(7)(A) In the case of any letter of offer to sell any
12 major defense equipment for \$14,000,000 or more, in ad-
13 dition to the other information required to be contained
14 in a certification submitted to the Congress under this
15 subsection, each such certification shall include the value
16 of any charge or charges for the proportionate amount of
17 any nonrecurring costs of research, development, and pro-
18 duction of the major defense equipment that was waived
19 or reduced under section 21(e).

1 “(B) Each such certification shall also include infor-
2 mation on—

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

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

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

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

11 “(I) the manner in which a sale would sig-
12 nificantly advance standardization with the for-
13 eign countries or international organization de-
14 scribed in such section; and

15 “(II) the extent to which the sale’s signifi-
16 cance should be considered relative to the exist-
17 ing capabilities of the foreign country or inter-
18 national organization and the manner in which
19 the major defense equipment would enhance an
20 the capacity of the country or organization in
21 joint operations; and

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

1 “(I) the military needs and ability to pay
2 of the foreign country or international organiza-
3 tion;

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

10 “(III) the previous buying history and ex-
11 isting capabilities of the foreign country or
12 international organization.”.

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

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

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

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

20 “(13) with respect to requests to waive or re-
21 duce nonrecurring costs with respect to the sale of
22 major defense equipment for \$14,000,000 or more
23 under this Act, a report on—

24 “(A) the total number of such requests
25 that have been approved or denied during the

1 quarter, including the total number of such re-
2 quests that are currently under review and
3 pending a decision; and

4 “(B) for each such request—

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

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

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

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

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

19 (c) REPEAL OF WAIVER AUTHORITY IN CASE OF
20 SALES OF MAJOR DEFENSE EQUIPMENT ALSO BEING
21 PROCURED FOR USE BY UNITED STATES ARMED
22 FORCES.—Section 21(e)(2) of the Arms Export Control
23 Act (22 U.S.C. 2761(e)(2)) is amended—

24 (1) in subparagraph (B)—

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

1 (i) by striking “The President” and
2 inserting “Except as provided subpara-
3 graphs (D) and (E), the President”; and

4 (ii) by striking “that—” and all that
5 follows through “(i) imposition” and in-
6 serting “that imposition”;

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

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

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

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

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

24 “(ii) The date that is the last day of any
25 five-year period in which the country or organi-

1 zation receives 15 or more waivers of a charge
2 or charges under paragraph (1)(B) with respect
3 to sales to the country or organization.

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

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

21 “(ii) The President may not waive such charge
22 or charges if Congress, not later than 30 calendar
23 days after receiving such notification, enacts a joint
24 resolution prohibiting the proposed waiver.”.

1 (d) REVIEW AND REPORT ON USE AND MANAGE-
2 MENT OF ADMINISTRATIVE SURCHARGE UNDER THE
3 FOREIGN MILITARY SALES PROGRAM.—

4 (1) REVIEW.—

5 (A) IN GENERAL.—The Director of the
6 Defense Security Cooperation Agency shall re-
7 view options for expanding the use of the ad-
8 ministrative surcharge under the foreign mili-
9 tary sales program, including practices for man-
10 aging the administrative surcharge and the con-
11 tract administrative services surcharge.

12 (B) MATTERS TO BE INCLUDED.—The re-
13 view conducted under subparagraph (A) shall
14 include the following:

15 (i) A determination of which specific
16 expenses are incurred by the United States
17 Government in operation of the Foreign
18 Military Sales program that the adminis-
19 trative surcharge does not currently pay
20 for.

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

23 (iii) An assessment of the costs and
24 benefits of funding such specific expenses
25 through the administrative surcharge, in-

1 including any data to support such an as-
2 sessment.

3 (iv) An assessment of how the De-
4 fense Security Cooperation Agency could
5 calculate an upper bound of a target range
6 for the administrative surcharge account
7 and the contract administration services
8 surcharge account, including an assess-
9 ment of the costs and benefits of setting
10 such a bound.

11 (v) An assessment of how the Defense
12 Security Cooperation Agency calculates the
13 lower bound, or safety level, for the admin-
14 istrative surcharge account and the con-
15 tract administration services surcharge ac-
16 count, including what specific factors in-
17 form the calculation and whether such a
18 method for calculating the safety level is
19 still valid or should be revisited.

20 (vi) An assessment of the process
21 used by the Defense Security Cooperation
22 Agency to review and set rates for the ad-
23 ministrative surcharge and the contract
24 administration services surcharge, includ-
25 ing the extent to which outside parties are

1 consulted and any proposals the Director
2 may have for better ensuring that the fee
3 rates are set appropriately.

4 (vii) Such other matters as the Direc-
5 tor of the Defense Security Cooperation
6 Agency determines to be appropriate.

7 (2) REPORT.—Not later than 120 days after
8 the date of the enactment of this Act, the Director
9 of the Defense Security Cooperation Agency shall
10 submit to the congressional defense committees a re-
11 port on—

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

14 (B) any legislative changes needed to allow
15 the surcharge under the foreign military sales
16 program to pay for any expenses currently not
17 covered by administrative surcharge under the
18 Foreign Military Sales program.

19 (3) FOREIGN MILITARY SALES PROGRAM DE-
20 FINED.—In this subsection, the term “foreign mili-
21 tary sales program” means the program authorized
22 under chapter 2 of the Arms Export Control Act (22
23 U.S.C. 2761 et seq.)

