

FOREIGN RELATIONS AUTHORIZATION ACT FOR FY 2013

SECTION-BY-SECTION SUMMARY

Section 1. Short title. This section provides that the short title of this Act is the 'Foreign Relations Authorization Act, Fiscal Year 2013.'

Section 2. Table of contents. This section provides a table of contents for this Act.

Section 3. Appropriate congressional committees defined. This section specifies that 'appropriate congressional committees' means the House Foreign Affairs Committee and the Senate Foreign Relations Committee, unless otherwise provided.

TITLE I--AUTHORIZATION OF APPROPRIATIONS

Section 101. Administration of foreign affairs. This section authorizes certain appropriations under the heading 'Administration of Foreign Affairs' for fiscal year 2013 ("FY13"). In particular, this section provides authorization of appropriations for the necessary expenses of the Department of State and the Foreign Service, including: personnel costs; worldwide security protection; information technology systems; the construction, maintenance, and security of U.S. embassies and overseas facilities; educational and cultural exchange programs; conflict stabilization operations; representational allowances; protection of foreign missions and officials; emergencies in the diplomatic and consular service; repatriation loans; payment to the American Institute in Taiwan; and for the Office of the Inspector General.

Subsection (1) authorizes \$8.98 billion for Diplomatic and Consular Programs ("D&CP", the main State salaries and operations account). This is the same level as the FY13 State-Foreign Operations Appropriations bill reported by the House Appropriations Committee. Within that amount, \$24.1 million is authorized for the Bureau of Democracy, Human Rights, and Labor (the same as current year enacted levels). The subsection also includes a pay limitation that keeps the Washington, DC locality pay that Foreign Service Officers receive while overseas at the current-year, two-thirds level they currently receive (under multiple, prior appropriations acts).

Subsections (2) through (11) authorize the same amounts as current-year enacted levels for their respective accounts. In addition, as House Appropriations has done for FY13, subsections (5) [Conflict Stabilization Operations] and (10) [American Institute in Taiwan] include transfer authority that allows the Secretary to use a certain amount of D&CP funding (authorized in subsection (1)) for those purposes, subject to a Congressional notification requirement.

Section 102. Contributions to International Organizations. The Committee-reported text of this section authorizes \$1.55 billion in FY13 (the same as current-year enacted levels) for U.S. assessed contributions to the United Nations and other international organizations of which the United States is a member.

Section 103. Contributions for International Peacekeeping Activities. This section authorizes \$1.828 billion in FY13 (the same as current-year enacted levels) to enable the United States to pay assessed contributions for United Nations peacekeeping operations.

Section 104. International Commissions. This section authorizes funding for FY13 at current-year enacted levels, to enable the U.S. to meet its obligations as a participant in international commissions dealing with boundaries, water resources, and related matters with Canada and Mexico; and those dealing with international fisheries.

Section 105. Peace Corps. For FY13, this section authorizes current-year enacted levels (\$375 million) for the Peace Corps, of which \$5.15 million is for the Office of the Inspector General of the Peace Corps.

Section 106. National Endowment for Democracy. For FY13, this section authorizes \$122.7 million for the National Endowment for Democracy (the FY13 level in the House Appropriations Committee's State-Foreign Operations bill).

TITLE II--DEPARTMENT OF STATE AUTHORITIES AND ACTIVITIES

Subtitle A--Basic Authorities and Activities

Section 201. International Litigation Fund. This section (carried in last year's bill) corrects an oversight in the 2002 authorization to replenish the International Litigation Fund (which is used to defray the expenses of the United States in major international litigation before international tribunals, such as trade arbitrations), by allowing the Department to retain a small percentage of the awards received for international claims successfully *prosecuted* by the Department (rather than having to re-capitalize the ILF with U.S. taxpayer funds). This revision also allows the fund to be replenished from cases where the Department has successfully *defended* the U.S. and been awarded costs and attorneys' fees.

Section 202. Actuarial valuations. This section (carried in last year's bill) transfers statutory responsibility for performing actuarial duties related to the State Department's retirement systems from the Treasury Department to the State Department (which provides all of the data for those actuarial valuations, and is most knowledgeable about its own systems) thus increasing the efficiency and cost-effectiveness of that function. The section also authorizes the Secretary of State, subject to amounts provided in advance in appropriations acts, to use monies in the Foreign Service Retirement and Disability Fund to cover the costs of administering those systems.

Section 203. Special agents. This section (carried in last year's bill) amends the State Department Basic Authorities Act to make clear that Foreign Service special agents possess the authority to investigate identity theft and document fraud, as well as federal offenses committed at U.S. diplomatic posts and residences overseas.

Section 204. Diplomatic security program contracting. This section (carried in last year's bill and prior appropriations acts) grants the Department discretion to award local guard and protective service contracts in high risk areas (such as Afghanistan and Iraq) on the basis of 'best value to the Government' (according to a defined, regulatory process) rather than having to go with the lowest price bid. Because lowest-price bidders sometimes offer their employees minimal training, wages, and benefits, it has led in some previous situations to poorly trained guard forces with low morale and high turnover that have undermined the effectiveness of the guard force at certain critical, high risk posts.

Section 205. Accountability Review Boards. This section would extend until 2015 a provision (carried in prior appropriations acts) granting the Secretary of State increased discretion in conducting investigations of serious incidents (involving injury, loss of life, or significant property destruction) at high-risk U.S. posts (such as in Afghanistan, Pakistan, and Iraq). Otherwise, current regulation requires the convening of a full Accountability Review Board (ARB), a formal, personnel-heavy process that could put ARB personnel unnecessarily into harm's way and place a strain on resources at those high risk posts.

Section 206. Physical security of certain soft targets. This section (requested by State) would ensure that State's authority to help increase the safety of overseas schools attended by children of U.S. personnel also includes the ability to provide physical security enhancements to facilities other than buildings and real property (such as school buses).

Section 207. Rewards program update and technical corrections. This section includes the operative text of H.R. 4077, the strongly bipartisan Department of State Rewards Program Update and Technical Corrections Act of 2012. It would enhance current award authorities (largely focused on terrorism and narcotics traffickers) by allowing the State Department to offer rewards for the arrest or conviction of participants in transnational organized crime, or (after notice to Congress) foreign nationals accused of war crimes, crimes against humanity, or genocide. It protects U.S. sovereignty by expressly disclaiming authority for any activity precluded under the American Service members' Protection Act (P.L. 107-206), and identifies the preexisting account from which the expanded rewards shall be funded. The State Department testified in support of this legislation before the Terrorism, Nonproliferation, and Trade Subcommittee earlier this year.

Section 208. Cybersecurity Efforts of the Department of State. This section authorizes the establishment in the office of the Secretary of State a Coordinator for Cyber Issues, requires the Secretary of State to submit a one-time report on the Department of State's cybersecurity efforts and a list of "countries of cybersecurity concern," and requires the Coordinator for Cyber Issues to submit a strategy for United States engagement on international cyber issues.

Section 209. Center for Strategic Counterterrorism Communications of the Department of State. This section provides express Congressional authorization for the Center for Strategic Counterterrorism Communications (hereinafter "CSCC"), which already exists within the Department of State. This interagency initiative and its operations were institutionalized within the Executive branch by Executive Order 13584. The CSCC, headed by a Coordinator who

should report to the Under Secretary for Public Diplomacy and Public Affairs, should coordinate government-wide public communications activities directed at audiences abroad and targeted against violent extremists and terrorist organizations. This section also states that the Secretary of State should establish a Steering Committee of senior representatives from relevant U.S. agencies who meet not less than once every six months.

Subtitle B--Consular Services and Related Matters

Section 211. Extension of authority to assess passport surcharge. The Passport Services Enhancement Act of 2005 (P.L. 109-167) amended the Passport Act to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) (IRTPA). This section (carried in last year's bill and prior appropriations acts) would temporarily extend that authority through 2015.

Section 212. Border crossing card fee for minors. This section (carried in last year's bill) would change the charge for a machine-readable U.S. border crossing ID card for Mexican children (under the age of 15) from the current flat fee of \$13 (set in the FY 1999 State appropriations bill, back when normal machine-readable visa (MRV) fees were only \$20) to a fee equal to half of the fee that would otherwise apply today (normal MRV fees are now around \$140, due to increased border security, fraud prevention, information systems, and consular staffing implemented over the past decade). This would allow the Department to recoup from those foreign applicants a greater proportion of the actual costs incurred in providing that service.

Subtitle C—Reporting Requirements

Section 221. Reporting reform. Over past decades, numerous statutes have created specific State Department reporting requirements in perpetuity, by failing to include a sunset date, leading to the accretion of costly reporting requirements that, over time, have become duplicative (of other required reporting or readily available information sources), irrelevant (due to changed circumstances), and unused by Congress. The proposed repeal of these reports was also included in last year's bill (as part of a longer list, the rest of which was already enacted in the FY12 omnibus appropriations bill):

- (1) Subsections (c)(4) and (c)(5) of section 601 of P.L. 96-465 (*State Dept. workforce planning*);
- (2) Section 585 in the matter under section 101(c) of Div. A of P.L. 104-208 (*DPRK fuel use and deployment*); and
- (3) Section 11(b) of P.L. 107-245 (*Sudan war crimes*).

TITLE III--ORGANIZATION AND PERSONNEL AUTHORITIES

Section 301. Suspension of Foreign Service members without pay. This section (carried in last year's bill) grants the Secretary the discretion to suspend without pay a Foreign Service Officer credibly accused of a crime. This would prevent the Department from being forced to pay an employee who, for example, has been indicted and is being incarcerated pending trial. At present, no administrative action can be taken before such an employee has been convicted.

Section 302. Repeal of recertification requirement for Senior Foreign Service. This section (carried in last year's bill) would repeal section 305(d) of the Foreign Service Act, which had required the Secretary to establish a recertification requirement for members of the Senior Foreign Service (SFS) equivalent to the recertification process for the Senior Executive Service (SES). The Homeland Security Act of 2002 repealed recertification requirements for SES employees based on the assessment that those requirements did not serve a useful purpose (while imposing additional bureaucratic costs).

Section 303. Limited appointments in the Foreign Service. This section (carried in last year's bill) amends section 309 of the Foreign Service Act of 1980 to provide new authority to extend 'limited appointments' in the Foreign Service. Section 309 currently provides that limited (non-career) appointments may not exceed 5 years in duration and may not be extended or renewed except under limited exceptions.

Section 304. Limitation of compensatory time off for travel. This section (carried in last year's bill) adds a new subsection (c) to 5 U.S.C. 5550b limiting the accrual of compensatory time off for travel status away from the employee's official duty station to a maximum of 104 hours (13 days). This 104-hour limitation is equivalent to standard yearly sick leave in the civil service.

Section 305. Department of State organization. To help eliminate duplication and increase structural efficiency, this section grants the Secretary discretion, after consultation with the Committee, to transfer authorities and duties statutorily assigned to the Coordinators for Counterterrorism, International Energy Affairs, and Reconstruction and Stabilization to the new bureaus covering those subjects that were established late last year.

Section 306. Reemployment of annuitants. This section (carried in multiple, prior appropriations acts) extends for another year the temporary authority of the Secretary to hire retired State Department annuitants for hard-to-fill positions at high-risk posts.

Section 307. Overseas Foreign Service pay. This section extends for one year the temporary authority for DC locality pay for overseas Foreign Service officers (carried in multiple, prior appropriations acts), subject to section 101(1)(C) (with the net result of holding such pay at current-year levels).

TITLE IV--UNITED STATES INTERNATIONAL BROADCASTING

Section 401. Authorization of appropriations for international broadcasting. For FY13, this section authorizes \$744.5 million for International Broadcasting Operations and \$7 million for Broadcasting Capital Improvements (current-year enacted levels).

Section 402. Personal services contracting program. This authority (carried in last year's bill, and in multiple, prior appropriations acts) extends through 2015 the ability of the Broadcasting Board of Governors (BBG) to employ up to 60 personal services contractors, a pilot authority that BBG has used to respond to needs for surge broadcasts in priority areas (such as the Urdu, Dari, and Pashto services) without having to make a longer-term investment in full-time, career employees.

Section 403. Technical amendment relating to civil immunity for Broadcasting Board of Governors members. The U.S. International Broadcasting Act has long made clear that all limitations on personal liability that apply to members of the Broadcasting Board of Governors also apply when they are acting in their capacities as board members of BBG's individual broadcast services. This section (carried in last year's bill) adds the Middle East Broadcasting Networks (which was established after the enactment of that statute) to that list of broadcast services.

TITLE V--ARMS EXPORT CONTROL ACT AMENDMENTS AND RELATED PROVISIONS

Subtitle A—General Provisions

Section 501. Authority to transfer excess defense articles. This provision (carried in last year's bill) clarifies that the aggregate annual limitation on excess defense articles applies to articles authorized to be transferred and raises the annual limit from \$425 million to \$450 million. Section 516 of the FAA authorizes the president to transfer Excess Defense Articles (EDA) on a grant basis to eligible countries justified, in the annual Congressional Budget Justification. While EDA can be transferred at no-cost, the recipient must typically pay for any transportation or repair charges. Under certain circumstances, transportation charges may be waived, with the cost absorbed by DOD appropriated funds. The dollar limitation contained in section 516(g)(1) was last modified by the Security Assistance Act of 1999 (P.L-106-113).

Section 502. Annual military assistance report. This provision (carried in last year's bill) amends section 655 of the FAA to clarify that the annual military assistance report should include unlicensed exports of defense articles under section 38 of the Arms Export Control Act, as well as the actual total dollar value of major defense equipment and defense articles delivered pursuant to licenses authorized under Section 38 of the Arms Export Control Act.

Section 503. Annual report on foreign military training. This provision changes the date upon which the military training report required by Section 656 of the FAA is due to the Congress from January 31 to March 1. These changes should improve timeliness of reporting. A similar provision was carried in last year's bill.

Section 504. Increased flexibility for use of defense trade control registration fees. This section (carried in last year's bill) provides the Director of Defense Trade Controls at the Department of State with the ability to use the fees that it collects from arms manufacturers and exporters for all the expenses associated with the agency. This provision amends section 45 of

the State Department Basic Authorities Act to authorize the Department to use these retained fees to conduct the full range of defense trade control functions and activities.

Section 505. Increase in congressional notification thresholds. This section increases monetary thresholds for 15 and 30 day Congressional review periods attendant to considering resolutions of disapproval of Foreign Military Sales (FMS) and commercial arms sales under the Arms Export Control Act. For close partner countries, the limits are raised from \$25 to \$75 million for Significant Military Equipment (SME), and from \$100 million to \$200 million for total contract value. For all other countries, from \$14 to \$50 million for SME, \$50 to \$100 million for total contract value. However, it retains existing statutory threshold levels for notification of the export to Congress. A nearly identical provision was carried in last year's bill.

Section 506. Return of defense articles. This provision (carried in last year's bill) amends section 21(m) of the AECA to permit, with prior State Department approval, the retransfer to the U.S. Government of defense articles to include SME. This provision will increase the flexibility of the Department of Defense to acquire urgently needed defense equipment not currently in DoD stocks.

Section 507. Annual estimate and justification for sales program. This section (carried in last year's bill) amends section 25(a) of the AECA (the "Javits report") to require that the annual justification for proposed arms sales includes a discussion of the extent to which such transfers advance U.S. strategies for regional security cooperation.

Section 508. Updating and conforming penalties for violations of sections 38 and 39 of the Arms Export Control Act. This section broadens the list of statutes for which indictments and convictions form the basis for ineligibility under the AECA. It also ensures that criminal penalties under the Act conform to the standard established under The International Emergency Economic Powers Act (IEEPA). A nearly identical provision was carried in last year's bill.

Section 509. Clarification of prohibitions relating to state sponsors of terrorism and their nationals. This provision (carried in last year's bill) amends Section 40 of the AECA to clarify that the prohibition on transactions with state sponsors of terrorism extends to nationals of those countries which have had substantive contacts with any country that is a state sponsor of terrorism sufficient to give rise to a reasonable risk of diversion. It also adds a conforming definition of the term "national."

Section 510. Exemption for transactions with countries supporting acts of international terrorism. This section (carried in last year's bill) allows law enforcement agencies to engage in transactions for the purpose of prosecuting persons suspected of supporting countries that are state sponsors of terrorism. Section 40 of the AECA prohibits the U.S. Government from providing any license or other approval under Section 38 for any export or other transfer of a defense article or defense service to a state sponsor of terrorism. That section also prohibits any person from exporting any defense article or defense service to such a country. Section 40(h) exempts from these prohibitions transactions subject to reporting under title V of the National Security Act of 1947. In efforts to prosecute individuals providing defense articles and defense

services to state sponsors of terrorism, many law enforcement agencies have had to drop or curtail criminal investigations of export violations because they did not fall within this exemption. This amendment to section 40 would remedy that problem.

Section 511. Report on Foreign Military Financing program. This section (carried in last year's bill) requires that the President provide an annual report on the Foreign Military Financing Program. It amends section 23 of the AECA to require that the President transmit as part of the supporting materials of the annual congressional budget justification a report reviewing the extent to which FMF requests are based on well-formulated and realistic capability requirements of foreign recipients; the extent to which the use of such authority is consistent with U.S. conventional arms transfer policy; and the extent to which the Department of State has developed and implemented specific plans to monitor and evaluate outcomes under the authority of this section, including at least one country or international organization assessment each fiscal year. The Congressional recipients of the report would be the Foreign Affairs and Appropriations Committees of the House and the Foreign Relations and Appropriations Committees of the Senate.

Section 512. Congressional notification of regulations and amendments to regulations under section 38 of the Arms Export Control Act. This section (carried in last year's bill) adds a new requirement to the AECA that the President submit to the Committees on Foreign Affairs and Foreign Relations a copy of regulations or amendments to regulations issued to implement section 38 of the Act not less than 30 days before publication in the Federal Register unless, after consulting with the Committees, the President determines that there is an emergency that requires a shorter period of time.

Section 513. Diplomatic efforts to strengthen national and international arms export controls. This section (carried in last year's bill) states the Sense of Congress that the President should increase efforts to strengthen multilateral export control regimes, with a 5-year annual report on U.S. efforts to do so.

Section 514. Review and report of investigations of violations of section 3 of the Arms Export Control Act. This section (carried in last year's bill) requires the Department of State Inspector General to annually review for each of the fiscal years 2012-2016 the process of reviewing and reporting to Congress any misuse of U.S.-provided defense items, and to report the findings to the Committee on Foreign Affairs of the House and the Committee on Foreign Relations of the Senate. The Committee is concerned that in recent years the Department has not followed a consistent practice in conducting the violations review process, as required by Section 3(c) of the Arms Export Control Act.

Section 515. Reports on Commercial and Governmental Military Exports Under the Arms Export Control Act; Congressional Actions. This section amends section 36 of the AECA to ensure continued close consultation with the Executive Branch on, and appropriate Congressional oversight over, foreign arms sales proposed by the President.

Section 515(a) would amend section 36(b) and 36(c) of the AECA, relating to government-to-government and commercial sales, to require the President to consult fully with the House Foreign Affairs and Senate Foreign Relations Committees before submitting proposed arms sale cases that are required under that Act to be formally notified to Congress.

Section 515(b) would further amend section 36 of the AECA to require that the President provide advance notification to, and consult with, the chairs and ranking minority members of those committees regarding proposed government-to-government and commercial sales that are required by that Act to be formally notified to Congress. A notification required by sections 36 for government-to-government and commercial sales would also be subject to the reprogramming procedures of section 634A(a) of the Foreign Assistance Act of 1961. The requirements for advance notification shall not apply if the President determines that an emergency exists; the applicability of section 634A(a) reprogramming procedures shall not apply if the President determines that extraordinary circumstances exist which obviate the necessity for such requirement and so reports to the Foreign Affairs and Foreign Relations Committees.

Subtitle B—Miscellaneous Provisions

Section 521. Treatment of Militarily Insignificant Parts and Components. This section states that it shall be the policy of the United States, pursuant to section 38(f) of the AECA, to prioritize the removal of those militarily insignificant parts, components, accessories and attachments from the United States Munitions List (USML) that, even if specifically designed for a defense article on the USML, would warrant no more than anti-terrorism controls under the Export Administration Act of 1979.

Section 522. Special Export Licensing for United States Allies. This section would authorize the President to establish special licensing procedures for the export of replacement components, parts, and related items that are not designated as major defense equipment or significant military equipment to close U.S. allies (a group that includes NATO member countries, Japan, Australia, the Republic of Korea, Israel, and New Zealand).

Section 523. Sense of Congress to Improve and Streamline Licensing. This section expresses the sense of Congress that in implementing export control reform the Executive Branch should place greater priority on improvement and streamlining of Special Comprehensive Export Authorizations, used for cooperative defense programs like the F-35 Joint Strike Fighter. Eligible countries would include NATO member countries, Japan, Australia, the Republic of Korea, Israel, and New Zealand.

Section 524. Authority to Remove Satellites and Related Components from the United States Munitions List. This section would provide the President with limited, conditional authority to remove commercial communication satellites and related components and technology from the United States Munitions List. It would also prohibit the export of such satellites and related components and technology to state sponsors of terrorism, and certain other countries subject to a U.S. arms embargo (which would include the People's Republic of China). This section was carried in H.R.4310, the National Defense Authorization Act for Fiscal Year 2013.

Subsection (a) would authorize the President to remove commercial satellites and related components and technology from the United States Munitions List (USML) pursuant to the requirements of section 38(f) of the Arms Export Control Act.

Subsection (b) requires that the President may exercise this authority only if he first submits a determination to the appropriate congressional committees that the transfer of commercial satellites and related components and technology from the USML does not pose an unacceptable risk to the national security of the United States. Such determination must include a description of the risk-mitigating controls, procedures, and safeguards the President will put into place to reduce such risk to an absolute minimum.

Subsection (c) prohibits the export of any commercial satellite or related component or technology to any person or entity of the People's Republic of China, Cuba, Iran, North Korea, Sudan, and Syria, as well as other countries subject to a United States arms embargo.

Subsection (d) requires that not later than 1 year after the date of enactment of this Act, and annually thereafter, that the Director of National Intelligence submit a report to the appropriate congressional committees on efforts of state sponsors of terrorism, other foreign countries to illicitly acquire commercial satellites and related components and technology.

Subsection (e) defines the term appropriate congressional committees to mean: (1) the Committees on Foreign Relations, Arms Services, and Intelligence of the Senate; and (2) the Committees on Foreign Affairs, Armed Services, and Intelligence of the House.

Section 525. Report on Licenses and other Authorizations to Export Commercial Satellites and Related Components and Technology Contained on the Commerce Control List. This section requires that the President submit quarterly reports to the House Foreign Affairs and Senate Banking Committees on licenses and other authorizations for the export of commercial communication satellites and related components and technology. This section was carried in H.R.4310, the National Defense Authorization Act for Fiscal Year 2013.

Section 526. Review of United States Munitions List. This section would amend section 38(f) of the Arms Export Control Act to require that the President's notice to Congress under that section shall include, to the extent practicable, an enumeration of the item or items proposed for removal from the United States Munitions List. This section was carried in H.R.4310, the National Defense Authorization Act for Fiscal Year 2013.

Section 527. Report on Country Exemptions for Licensing of Exports of Munitions and Related Technical Data. This section requires a one-time report on the enforceability of certain license exemptions for munitions and related technical data regulated by the Department of Commerce. A nearly identical provision was carried in H.R.4310, the National Defense Authorization Act for Fiscal Year 2013.

Subsection (a) requires that not later than 120 days after the date of enactment of this Act, the Attorney General, the Secretary of Commerce, and the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on whether or not country exemptions from certain Commerce Department licensing requirements contain strong safeguards and require sufficient documentation to facilitate law enforcement of any associated criminal violations.

Subsection (b) contains definitions of the terms “appropriate congressional committees” and the term “munitions.”

Section 528. End-Use Monitoring of Munitions. This section requires the President to establish a program to provide for the end-use monitoring of munitions and related technical data regulated by the Department of Commerce. It further provides that the President report to Congress on implementation of this requirement not later than 180 days after the date of enactment of this Act. This section was carried in H.R.4310, the National Defense Authorization Act for Fiscal Year 2013.

Section 529. Definitions. This section defines the terms “Commerce Munitions List”; “Commercial Satellites and Related Components and Technology”; “Export Administration Regulations”; “State Sponsor of Terrorism”; and “United States Munitions List”.