

Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101-510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-189, div. A, title III, § 322(c), Nov. 29, 1989, 103 Stat. 1414, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to property that comes into the custody or control of the Secretary of a military department or the Secretary of Transportation after the date of the enactment of this Act [Nov. 29, 1989].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

§ 2576. Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement, firefighting, homeland security, and emergency management agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, personal protective equipment, and other appropriate equipment which (1) are suitable for use by such agencies in carrying out law enforcement, firefighting, homeland security, and emergency management activities, and (2) have been determined to be surplus property under subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement, firefighting, homeland security, or emergency management agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement, firefighting, homeland security, or emergency management agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency.

(Added Pub. L. 90-500, title IV, § 403(a) Sept. 20, 1968, 82 Stat. 851; amended Pub. L. 96-513, title V, § 511(85), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107-217, § 3(b)(10), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 111-350, § 5(b)(42), Jan. 4, 2011, 124 Stat. 3846; Pub. L. 111-383, div. A, title X, § 1072(a)-(c)(1), Jan. 7, 2011, 124 Stat. 4366.)

Editorial Notes

AMENDMENTS

2011—Pub. L. 111-383, § 1072(c)(1), substituted “Surplus military equipment: sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies” for “Surplus military equipment: sale to State and local law enforcement and firefighting agencies” in section catchline.

Subsec. (a). Pub. L. 111-383, § 1072(a)(1), (b), substituted “State and local law enforcement, firefighting, homeland security, and emergency management agencies” for “State and local law enforcement and firefighting agencies”, “personal protective equipment, and other appropriate equipment” for “and protective body armor”, and “in carrying out law enforcement, firefighting, homeland security, and emergency management activities” for “in carrying out law enforcement and firefighting activities”.

Pub. L. 111-350 substituted “division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” for “title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)”.

Subsec. (b). Pub. L. 111-383, § 1072(a)(2), substituted “State or local law enforcement, firefighting, homeland security, or emergency management agency” for “State or local law enforcement or firefighting agency” in two places.

2002—Subsec. (a). Pub. L. 107-217 inserted “subtitle I of title 40 and title III of” before “the Federal Property and Administrative Services Act of 1949” and substituted “(41 U.S.C. 251 et seq.)” for “(40 U.S.C. 471 et seq.)”.

1980—Subsec. (a). Pub. L. 96-513 substituted “under” for “pursuant to”, and “(40 U.S.C. 471 et seq.)” for “(68 Stat. 377), as amended”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

TRANSFER OF EXCESS AIRCRAFT TO OTHER DEPARTMENTS OF THE FEDERAL GOVERNMENT AND TO STATES

Pub. L. 112-239, div. A, title X, § 1091, Jan. 2, 2013, 126 Stat. 1971, as amended by Pub. L. 117-263, div. A, title X, § 1060, Dec. 23, 2022, 136 Stat. 2781, provided that:

“(a) TRANSFER.—The Secretary of Defense may transfer excess aircraft specified in subsection (b) to the Secretary of Agriculture for use by the Forest Service, to the Secretary of Homeland Security for use by the United States Coast Guard, and to the Governor of a State. The transfer of any excess aircraft under this subsection shall be without reimbursement.

“(b) AIRCRAFT.—The aircraft transferred under subsection (a) are aircraft of the Department of Defense that are—

“(1) identified by the Forest Service, the United States Coast Guard, or the Governor of a State, as the case may be, as a suitable platform to carry out wildfire suppression, search and rescue, or emergency operations pertaining to wildfires;

“(2) excess to the needs of the Department of Defense, as determined by the Secretary of Defense;

“(3) in the case of aircraft to be transferred to the Secretary of Agriculture, acceptable for use by the Forest Service, as determined by the Secretary of Agriculture;

“(4) in the case of aircraft to be transferred to the Secretary of Homeland Security, acceptable for use by the United States Coast Guard, as determined by the Secretary of Homeland Security; and

“(5) in the case of aircraft to be transferred to the Governor of a State, acceptable for use by the State, as determined by the Governor.

“(c) ORDER OF TRANSFERS.—

“(1) RIGHTS OF REFUSAL.—In implementing the transfers authorized by subsection (a), the Secretary of Defense shall afford the Secretary of Agriculture the right of first refusal and the Secretary of Homeland Security the second right of refusal in the transfer to each department by the Secretary of Defense of excess aircraft specified in subsection (b) before the transfer of such excess aircraft is offered to the Governor of a State or to any other department or agency of the Federal Government.

“(2) EXPIRATION OF RIGHT OF REFUSAL.—A right of refusal afforded the Secretary of Agriculture or the Secretary of Homeland Security under paragraph (1) with regards to an aircraft shall expire upon official notice of such Secretary to the Secretary of Defense that such Secretary declines such aircraft.

“(d) CONDITIONS OF CERTAIN TRANSFERS.—Excess aircraft transferred to the Secretary of Agriculture or to the Governor of a State under subsection (a)—

“(1) may be used only for purposes of wildfire suppression, search and rescue, or emergency operations pertaining to wildfires; and

“(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts, search and rescue, emergency operations pertaining to wildfires, or for other purposes approved by the Secretary of Agriculture or Governor of the State, as the case may be, in writing in advance.

“(e) ADDITIONAL LIMITATION.—Excess aircraft transferred under subsection (a) may not be sold by the Secretary of Agriculture, the Secretary of Homeland Security, or the Governor of a State after transfer.

“(f) COSTS AFTER TRANSFER.—Any costs of operation, maintenance, sustainment, and disposal of excess aircraft transferred under subsection (a) after the date of transfer shall be borne by the Secretary of Agriculture, the Secretary of Homeland Security, or the Governor of the State to which such aircraft is transferred using only State funds, as applicable.

“(g) REPORTING.—Not later than December 1, 2022, and annually thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on aircraft transferred, during the fiscal year preceding the date of such report, to—

“(1) the Secretary of Agriculture, the Secretary of Homeland Security, or the Governor of a State under this section;

“(2) the chief executive officer of a State under section 112 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1318); or

“(3) the Secretary of the Air Force or the Secretary of Agriculture under section 1098 of the National Defense Authorization Act for Fiscal Year 2014 (Public Law 113-66; 127 Stat. 881).”

COMMERCIAL SALE OF SMALL ARMS AMMUNITION AND SMALL ARMS AMMUNITION COMPONENTS IN EXCESS OF MILITARY REQUIREMENTS, AND FIRED CARTRIDGE CASES

Pub. L. 111-383, div. A, title III, §346, Jan. 7, 2011, 124 Stat. 4191, as amended by Pub. L. 112-81, div. A, title III, §361, Dec. 31, 2011, 125 Stat. 1377, provided that:

“(a) COMMERCIAL SALE OF SMALL ARMS AMMUNITION, SMALL [ARMS] AMMUNITION COMPONENTS, AND FIRED CARTRIDGE CASES.—Small arms ammunition and small [arms] ammunition components which are in excess of military requirements, and intact fired small arms cartridge cases shall be made available for commercial sale. Such small arms ammunition, small arms ammunition components, and intact fired cartridge cases shall not be demilitarized, destroyed, or disposed of, unless in excess of commercial demands or certified by the Secretary of Defense as unserviceable or unsafe. This provision shall not apply to ammunition, ammunition components, or fired cartridge cases stored or expended outside the continental United States (OCONUS).

“(b) DEADLINE FOR GUIDANCE.—Not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 [Dec. 31, 2011], the Secretary of Defense shall issue guidance to ensure compliance with subsection (a). Not later than 15 days after issuing such guidance, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a letter of compliance providing notice of such guidance.

“(c) PREFERENCE.—No small arms ammunition or small arms ammunition components in excess of military requirements, or fired small arms cartridge cases may be made available for commercial sale under this section before such ammunition and ammunition components are offered for transfer or purchase, as authorized by law, to another Federal department or agency or for sale to State and local law enforcement, firefighting, homeland security, and emergency management agencies pursuant to section 2576 of title 10, United States Code, as amended by this Act.

“(d) SALES CONTROLS.—All small arms ammunition and small arms ammunition components, and fired small arms cartridge cases made available for commercial sale under this section shall be subject to all explosives safety and trade security controls in effect at the time of sale.

“(e) DEFINITIONS.—In this section:

“(1) SMALL ARMS AMMUNITION.—The term ‘small arms ammunition’ means ammunition or ordnance for firearms up to and including .50 caliber and for shotguns.

“(2) SMALL ARMS AMMUNITION COMPONENTS.—The term ‘small arms ammunition components’ means components, parts, accessories, and attachments associated with small arms ammunition.

“(3) FIRED CARTRIDGE CASES.—The term ‘fired cartridge cases’ means expended small arms cartridge cases (ESACC).”

AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS

Pub. L. 106-181, title VII, §740, Apr. 5, 2000, 114 Stat. 173, as amended by Pub. L. 107-296, title XVII, §1704(e)(6), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107-314, div. A, title X, §§1051, 1062(i), Dec. 2, 2002, 116 Stat. 2648, 2651, provided that:

“(a) AUTHORITY.—

“(1) SALE OF AIRCRAFT AND AIRCRAFT PARTS.—Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may sell aircraft and aircraft parts referred to in paragraph (2) to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

“(2) AIRCRAFT AND AIRCRAFT PARTS THAT MAY BE SOLD.—The aircraft and aircraft parts that may be sold under paragraph (1) are aircraft and aircraft parts of the Department of Defense that are determined by the Secretary of Defense to be—

“(A) excess to the needs of the Department; and

“(B) acceptable for commercial sale.

“(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

“(1) shall have as their primary purpose usage for oil spill spotting, observation, and dispersant delivery and may not have any secondary purpose that would interfere with oil spill response efforts under an oil spill response plan; and

“(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary of Homeland Security.

“(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Homeland Security certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

“(d) REGULATIONS.—

“(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act [Apr. 5, 2000], the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

“(2) CONTENTS.—The regulations shall—

“(A) ensure that the sale of the aircraft and aircraft parts is made at a fair market value, as determined by the Secretary of Defense, and, to the extent practicable, on a competitive basis;

“(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

“(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other operators in accordance with the conditions set forth in subsection (b) or pursuant to subsection (e); and

“(D) ensure, to the maximum extent practicable, that the Secretary of Defense consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

“(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of regulations prescribed under subsection (d).

“(f) REPORT.—Not later than March 31, 2006, the Secretary of Defense shall transmit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

“(1) the number and types of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

“(2) the persons or entities to which the aircraft were sold; and

“(3) an accounting of the current use of the aircraft sold.

“(g) STATUTORY CONSTRUCTION.—

“(1) AUTHORITY OF ADMINISTRATOR.—Nothing in this section may be construed as affecting the authority of the Administrator under any other provision of law.

“(2) CERTIFICATION REQUIREMENTS.—Nothing in this section may be construed to waive, with respect to an aircraft sold under the authority of this section, any requirement to obtain a certificate from the Administrator to operate the aircraft for any purpose (other than oil spill spotting, observation, and dispersant delivery) for which such a certificate is required.

“(h) PROCEEDS FROM SALE.—The net proceeds of any amounts received by the Secretary of Defense from the

sale of aircraft and aircraft parts under this section shall be covered into the general fund of the Treasury as miscellaneous receipts.

“(i) EXPIRATION OF AUTHORITY.—The authority to sell aircraft and aircraft parts under this section expires on September 30, 2006.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SALE OF AIRCRAFT FOR WILDFIRE SUPPRESSION PURPOSES

Pub. L. 104-307, Oct. 14, 1996, 110 Stat. 3811, as amended by Pub. L. 106-65, div. A, title X, §1067(23), Oct. 5, 1999, 113 Stat. 775; Pub. L. 106-398, §1 [div. A], title III, §388], Oct. 30, 2000, 114 Stat. 1654, 1654A-89; Pub. L. 107-314, div. A, title X, §1062(k), Dec. 2, 2002, 116 Stat. 2651; Pub. L. 112-239, div. A, title X, §1090, Jan. 2, 2013, 126 Stat. 1971, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Wildfire Suppression Aircraft Transfer Act of 1996’.

“SEC. 2. AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.

“(a) AUTHORITY.—(1) Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may, during a period specified in subsection (g), sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

“(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

“(A) excess to the needs of the Department; and

“(B) acceptable for commercial sale.

“(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

“(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

“(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

“(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

“(d) REGULATIONS.—(1) As soon as practicable after October 14, 1996, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. The regulations prescribed under this paragraph shall be effective until the end of the period specified in subsection (a)(1).

“(2) The regulations shall—

“(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

“(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

“(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

“(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

“(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

“(f) **REPORT.**—Not later than March 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Secretary’s exercise of authority under this section. The report shall set forth—

“(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

“(2) the persons or entities to which the aircraft were sold; and

“(3) an accounting of the current use of the aircraft sold.

“(g) **PERIODS FOR EXERCISE OF AUTHORITY.**—The periods specified in this subsection are the following:

“(1) The period beginning on October 1, 1996, and ending on September 30, 2005.

“(2) The period beginning on October 1, 2012, and ending on September 30, 2017.

“(h) **CONSTRUCTION.**—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law.”

§ 2576a. Excess personal property: sale or donation for law enforcement activities

(a) **TRANSFER AUTHORIZED.**—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

(A) suitable for use by the agencies in law enforcement activities, including counterdrug, counterterrorism, disaster-related emergency preparedness, and border security activities; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with the Attorney General, the Director of National Drug Control Policy, and the Secretary of Homeland Security, as appropriate.

(b) **CONDITIONS FOR TRANSFER.**—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment;

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient;

(5) the recipient, on an annual basis, and with the authorization of the relevant local governing body or authority, certifies that it has adopted publicly available protocols for the appropriate use of controlled property, the supervision of such use, and the evaluation of the effectiveness of such use, including auditing and accountability policies; and

(6) after the completion of the assessment required by section 1051(e) of the National Defense Authorization Act for Fiscal Year 2016, the recipient, on an annual basis, certifies that it provides annual training to relevant personnel on the maintenance, sustainment, and appropriate use of controlled property, including respect for the rights of citizens under the Constitution of the United States and de-escalation of force.

(c) **CONSIDERATION.**—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

(d) **PREFERENCE FOR CERTAIN TRANSFERS.**—In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to applications indicating that the transferred property will be used in the counterdrug, counterterrorism, disaster-related emergency preparedness, or border security activities of the recipient agency. Applications that request vehicles used for disaster-related emergency preparedness, such as high-water rescue vehicles, should receive the highest preference.

(e) **PROPERTY NOT TRANSFERRABLE.**—The Secretary may not transfer to a Tribal, State, or local law enforcement agency under this section the following:

(1) Bayonets.

(2) Grenades (other than stun and flash-bang grenades).

(3) Weaponized tracked combat vehicles.

(4) Weaponized drones.

(f) **PUBLICLY ACCESSIBLE WEBSITE.**—(1) The Secretary shall create and maintain a publicly available Internet website that provides information on the controlled property transferred under this section and the recipients of such property.

(2) The contents of the Internet website required under paragraph (1) shall include all publicly accessible unclassified information pertaining to the request, transfer, denial, and repossession of controlled property under this section, including—

(A) a current inventory of all controlled property transferred to Federal and State agencies under this section, listed by the name of the recipient and the year of the transfer;

(B) all pending requests for transfers of controlled property under this section, including the information submitted by the Federal and State agencies requesting such transfers; and

(C) all reports required to be submitted to the Secretary under this section by Federal and State agencies that receive controlled property under this section.

(g) **CONTROLLED PROPERTY.**—In this section, the term “controlled property” means any item assigned a demilitarization code of B, C, D, E, G,