

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of the President under this section, with certain conditions, see section 1(p) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16130, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

SUBCHAPTER IV—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

§ 2791. General provisions**(a) Considerations in procurement outside United States**

In carrying out this chapter, special emphasis shall be placed on procurement in the United States, but, subject to the provisions of subsection (b) of this section, consideration shall also be given to coproduction or licensed production outside the United States of defense articles of United States origin when such production best serves the foreign policy, national security, and economy of the United States. In evaluating any sale proposed to be made pursuant to this chapter, there shall be taken into consideration (A) the extent to which the proposed sale damages or infringes upon licensing arrangements whereby United States entities have granted licenses for the manufacture of the defense articles selected by the purchasing country to entities located in friendly foreign countries, which licenses result in financial returns to the United States, (B) the portion of the defense articles so manufactured which is of United States origin, and (C) whether, and the extent to which, such sale might contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.

(b) Information to Congress on credit sales and guaranties

No credit sale shall be extended under section 2763 of this title, and no guarantee shall be issued under section 2764 of this title, in any case involving coproduction or licensed production outside the United States of any defense article of United States origin unless the Secretary of State shall, in advance of any such transaction, advise the appropriate committees of the Congress and furnish the Speaker of the House of Representatives and the President of the Senate with full information regarding the proposed transaction, including, but not limited to, a description of the particular defense article or articles which would be produced under a license or coproduced outside the United States, the estimated value of such production or coproduction, and the probable impact of the proposed transaction on employment and production within the United States.

(c) Availability of funds for procurement outside United States

Funds made available under this chapter may be used for procurement outside the United

States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States.

(d) Responsibility of Secretary of Defense with respect to sales and guaranties

(1) With respect to sales and guaranties under sections 2761, 2762, 2763, 2764, 2769 and 2770 of this title, the Secretary of Defense shall, under the direction of the President, have primary responsibility for—

(A) the determination of military end-item requirements;

(B) the procurement of military equipment in a manner which permits its integration with service programs;

(C) the supervision of the training of foreign military personnel;

(D) the movement and delivery of military end-items; and

(E) within the Department of Defense, the performance of any other functions with respect to sales and guaranties.

(2) The establishment of priorities in the procurement, delivery, and allocation of military equipment shall, under the direction of the President, be determined by the Secretary of Defense.

(e) Revocation and suspension provisions of contracts for sale and export licenses; appropriations for refunds

(1) Each contract for sale entered into under sections 2761, 2762, 2769 and 2770 of this title, and each contract entered into under section 2767(d) of this title, shall provide that such contract may be canceled in whole or in part, or its execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.

(2)(A) Each export license issued under section 2778 of this title shall provide that such license may be revoked, suspended, or amended by the Secretary of State, without prior notice, whenever the Secretary deems such action to be advisable.

(B) Nothing in this paragraph may be construed as limiting the regulatory authority of the President under this chapter.

(3) There are authorized to be appropriated from time to time such sums as may be necessary (A) to refund moneys received from purchasers under contracts of sale entered into under sections 2761, 2762, 2769 and 2770 of this title, or under contracts entered into under section 2767(d) of this title, that are canceled or suspended under this subsection to the extent such moneys have previously been disbursed to private contractors and United States Government agencies for work in progress, and (B) to pay such damages and costs that accrue from the corresponding cancellation or suspension of the existing procurement contracts or United States Government agency work orders involved.

(f) Use of civilian contract personnel in foreign countries

The President shall, to the maximum extent possible and consistent with the purposes of this chapter, use civilian contract personnel in any foreign country to perform defense services sold under this chapter.

(Pub. L. 90-629, ch. 4, §42, Oct. 22, 1968, 82 Stat. 1326; Pub. L. 92-226, pt. IV, §401(e), (f), Feb. 7, 1972, 86 Stat. 33; Pub. L. 94-141, title I, §150(b), Nov. 29, 1975, 89 Stat. 760; Pub. L. 94-329, title II, §213, title VI, §605(b), June 30, 1976, 90 Stat. 745, 768; Pub. L. 96-533, title I, §105(e)(3), Dec. 16, 1980, 94 Stat. 3135; Pub. L. 97-392, §2, Dec. 29, 1982, 96 Stat. 1963; Pub. L. 99-83, title I, §115(b)(3), Aug. 8, 1985, 99 Stat. 201; Pub. L. 99-145, title XI, §1102(a)(4), (5), Nov. 8, 1985, 99 Stat. 710; Pub. L. 99-661, div. A, title XIII, §1342(e), Nov. 14, 1986, 100 Stat. 3991; Pub. L. 103-236, title VII, §714(a)(2), Apr. 30, 1994, 108 Stat. 497; Pub. L. 105-277, div. G, subdiv. A, title XII, §1225(a)(3), Oct. 21, 1998, 112 Stat. 2681-773.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277 struck out par. (1) designation, struck out “the assessment of the Director of the United States Arms Control and Disarmament Agency as to” after “, and (C)”, and struck out par. (2) which read as follows: “Any proposed sale made pursuant to this chapter shall be approved only after consultation with the Director of the United States Arms Control and Disarmament Agency. The Director of the Arms Control and Disarmament Agency is authorized, whenever the Director determines that a sale under this section would be detrimental to the national security of the United States, to recommend to the President that such sale be disapproved.”

1994—Subsec. (a). Pub. L. 103-236 designated existing provisions as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, amended cl. (C) generally, and added par. (2). Prior to being amended generally, cl. (C) read as follows: “in coordination with the Director of the United States Arms Control and Disarmament Agency, the Director’s opinion as to the extent to which such sale might contribute to an arms race, or increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control arrangements.”

1986—Subsec. (e)(1), (3). Pub. L. 99-661 repealed section 1102(a)(4) of Pub. L. 99-145 and the amendments made by that section, and provided that this section shall apply as if that section had never been enacted. See 1985 Amendments note below.

1985—Subsec. (e)(1), (3). Pub. L. 99-83 inserted reference to contracts under section 2767(d) of this title.

Pub. L. 99-145, §1102(a)(4), which enacted amendments similar to those provided in Pub. L. 99-83, was repealed. See 1986 Amendments note below and former section 1102(a)(5) of Pub. L. 99-145 set out as a Repeals; Effective Date note under section 2752 of this title.

1982—Subsecs. (d)(1), (e)(1), (3)(A). Pub. L. 97-392 substituted “2769 and 2770” for “and 2769”.

1980—Subsecs. (d)(1), (e)(1), (3). Pub. L. 96-533, §105(e)(3), inserted reference to section 2769 of this title.

1976—Subsec. (e). Pub. L. 94-329, §213, added subsec. (e).

Subsec. (f). Pub. L. 94-329, §605(b), added subsec. (f).

1975—Subsec. (a)(3). Pub. L. 94-141 inserted provision relating to coordination with the Director of the United States Arms Control and Disarmament Agency.

1972—Subsec. (a). Pub. L. 92-226, §401(e), (f)(1), added cl. (3) and inserted “, subject to the provisions of subsection (b) of this section,” before “consideration shall also be given”, respectively.

Subsecs. (b) to (d). Pub. L. 92-226, §401(f)(2), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

EFFECTIVE DATE

Section effective July 1, 1968, see section 41 of Pub. L. 90-629, set out as a note under section 2751 of this title.

Executive Documents

DELEGATION OF FUNCTIONS

For delegation of functions of the President under subsecs. (c) and (f) of this section, with certain conditions, see section 1(r) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16131, set out as a note under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

§ 2792. Administrative expenses**(a) Availability of funds**

Funds made available under other law for the operations of United States Government agencies carrying out functions under this chapter shall be available for the administrative expenses incurred by such agencies under this chapter.

(b) Charges for administrative expenses and official reception and representation expenses

Charges for administrative services calculated under section 2761(e)(1)(A) of this title shall include recovery of administrative expenses and official reception and representation expenses incurred by any department or agency of the United States Government, including any mission or group thereof, in carrying out functions under this chapter when—

(1) such functions are primarily for the benefit of any foreign country;

(2) such expenses are not directly and fully charged to, and reimbursed from amounts received for, sale of defense services under section 2761(a) of this title; and

(3) such expenses are neither salaries of the Armed Forces of the United States nor represent unfunded estimated costs of civilian retirement and other benefits.

(c) Limitations on funds used for official reception and representation expenses

Not more than \$86,500 of the funds derived from charges for administrative services pursu-