

1994—Pub. L. 103-447, §101(f)(1)(A), substituted “for fiscal year 1995” for “for fiscal years 1993 and 1994” in section catchline.

Subsec. (a). Pub. L. 103-447, §101(f)(1)(B)(i), substituted “March 1” for “April 1” in introductory provisions.

Subsec. (a)(3)(B) to (D). Pub. L. 103-447, §101(f)(1)(B)(ii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: “the significant direct or indirect sources of narcotics and psychotropic drugs and other controlled substances significantly affecting the United States;”.

Subsec. (c). Pub. L. 103-447, §101(f)(1)(D), (E), redesignated subsec. (d) as (c) and amended heading and text generally. Prior to amendment, text read as follows: “This section applies only during fiscal years 1993 and 1994. Section 2291i of this title does not apply during those fiscal years.”

Pub. L. 103-447, §101(f)(1)(C), struck out heading and text of subsec. (c). Text read as follows: “As used in this section—

“(1) the term ‘precursor chemical’ has the same meaning as the term ‘listed chemical’ has under paragraph (33) of section 802 of title 21; and

“(2) the term ‘major money laundering country’ means a country whose financial institutions engage in currency transactions involving significant amounts of proceeds from international narcotics trafficking.”

Subsec. (d). Pub. L. 103-447, §101(f)(1)(D), redesignated subsec. (d) as (c).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 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.

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.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

PLAN TO ADDRESS DIVERSION OF PRECURSOR CHEMICALS

Pub. L. 109-177, title VII, §722(d), Mar. 9, 2006, 120 Stat. 269, provided that: “In the case of each country identified pursuant to clause (i) or (ii) of section 489(a)(8)(A) of the Foreign Assistance Act of 1961 [22 U.S.C. 2291h(a)(8)(A)] (as added by subsection (a)) with respect to which the President has not transmitted to Congress a certification under section 490(b) of such Act (22 U.S.C. 2291j(b)), the Secretary of State, in consultation with the Attorney General, shall, not later than 180 days after the date on which the President transmits the report required by section 489(a) of such Act (22 U.S.C. 2291h(a)), submit to Congress a comprehensive plan to address the diversion of the chemicals described in section 489(a)(8)(A)(i) of such Act to the illicit production of methamphetamine in such country or in another country, including the establishment, expansion, and enhancement of regulatory, law enforce-

ment, and other investigative efforts to prevent such diversion.”

STATUTORY REFERENCES TO ANNUAL REPORTS, CERTIFICATIONS, AND DEFINITIONS

Pub. L. 102-583, §6(a), Nov. 2, 1992, 106 Stat. 4932, provided that after Sept. 30, 1994, any reference in any provision of law to section 2291h or 2291j of this title would be deemed a reference to the corresponding provision of section 2291i or 2291k of this title, respectively, unless the context required otherwise; any reference in any provision of law enacted before Nov. 2, 1992, to section 2291(e) or (i) of this title be deemed a reference to section 2291h or 2291(e) of this title, respectively; and that any reference in any provision of law enacted before Nov. 2, 1992, to section 2291(h) of this title be deemed, as of Oct. 1, 1992, to be a reference to section 2291j of this title, prior to repeal by Pub. L. 103-447, title I, §103(a), Nov. 2, 1994, 108 Stat. 4693.

§ 2291i. Repealed. Pub. L. 104-66, title I, § 1112(a), Dec. 21, 1995, 109 Stat. 723

Section, Pub. L. 87-195, pt. I, §489A, as added Pub. L. 102-583, §5(a), Nov. 2, 1992, 106 Stat. 4921; amended Pub. L. 103-447, title I, §101(f)(2), Nov. 2, 1994, 108 Stat. 4692, related to reporting requirements applicable after Sept. 30, 1995.

§ 2291j. Annual certification procedures

(a) Withholding of bilateral assistance and opposition to multilateral development assistance

(1) Bilateral assistance

Fifty percent of the United States assistance allocated each fiscal year in the report required by section 2413 of this title for each major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 2291h(a)(8)(A) of this title shall be withheld from obligation and expenditure, except as provided in subsection (b) of this section. This paragraph shall not apply with respect to a country if the President determines that its application to that country would be contrary to the national interest of the United States, except that any such determination shall not take effect until at least 15 days after the President submits written notification of that determination to the appropriate congressional committees in accordance with the procedures applicable to reprogramming notifications under section 2394-1 of this title.

(2) Multilateral assistance

The Secretary of the Treasury shall instruct the United States Executive Director of each multilateral development bank to vote, on and after March 1 of each year, against any loan or other utilization of the funds of their respective institution to or for any major illicit drug producing country or major drug-transit country (as determined under subsection (h) of this section) or country identified pursuant to clause (i) or (ii) of section 2291h(a)(8)(A) of this title, except as provided in subsection (b) of this section. For purposes of this paragraph, the term “multilateral development bank” means the International Bank for Reconstruction and Development, the International Development Association, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, and the

European Bank for Reconstruction and Development.

(b) Certification procedures

(1) What must be certified

Subject to subsection (d) of this section, the assistance withheld from a country pursuant to subsection (a)(1) of this section may be obligated and expended, and the requirement of subsection (a)(2) of this section to vote against multilateral development bank assistance to a country shall not apply, if the President determines and certifies to the Congress, at the time of the submission of the report required by section 2291h(a) of this title, that—

(A) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, to achieve full compliance with the goals and objectives established by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; or

(B) for a country that would not otherwise qualify for certification under subparagraph (A), the vital national interests of the United States require that the assistance withheld pursuant to subsection (a)(1) of this section be provided and that the United States not vote against multilateral development bank assistance for that country pursuant to subsection (a)(2) of this section.

(2) Considerations regarding cooperation

In making the determination described in paragraph (1)(A), the President shall consider the extent to which the country has—

(A) met the goals and objectives of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, including action on such issues as illicit cultivation, production, distribution, sale, transport and financing, and money laundering, asset seizure, extradition, mutual legal assistance, law enforcement and transit cooperation, precursor chemical control, and demand reduction;

(B) accomplished the goals described in an applicable bilateral narcotics agreement with the United States or a multilateral agreement; and

(C) taken legal and law enforcement measures to prevent and punish public corruption, especially by senior government officials, that facilitates the production, processing, or shipment of narcotic and psychotropic drugs and other controlled substances, or that discourages the investigation or prosecution of such acts.

(3) Information to be included in national interest certification

If the President makes a certification with respect to a country pursuant to paragraph (1)(B), the President shall include in such certification—

(A) a full and complete description of the vital national interests placed at risk if United States bilateral assistance to that country is terminated pursuant to this section and multilateral development bank assistance is not provided to such country; and

(B) a statement weighing the risk described in subparagraph (A) against the risks

posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

(c) Licit opium producing countries

The President may make a certification under subsection (b)(1)(A) of this section with respect to a major illicit drug producing country, or major drug-transit country, that is a producer of licit opium only if the President determines that such country maintains licit production and stockpiles at levels no higher than those consistent with licit market demand, and has taken adequate steps to prevent significant diversion of its licit cultivation and production into the illicit markets and to prevent illicit cultivation and production.

(d) Congressional review

Subsection (e) of this section shall apply if, within 30 calendar days after receipt of a certification submitted under subsection (b) of this section at the time of submission of the report required by section 2291h(a) of this title, the Congress enacts a joint resolution disapproving the determination of the President contained in such certification.

(e) Denial of assistance for countries decertified

If the President does not make a certification under subsection (b) of this section with respect to a country or the Congress enacts a joint resolution disapproving such certification, then until such time as the conditions specified in subsection (f) of this section are satisfied—

(1) funds may not be obligated for United States assistance for that country, and funds previously obligated for United States assistance for that country may not be expended for the purpose of providing assistance for that country; and

(2) the requirement to vote against multilateral development bank assistance pursuant to subsection (a)(2) of this section shall apply with respect to that country, without regard to the date specified in that subsection.

(f) Recertification

Subsection (e) of this section shall apply to a country described in that subsection until—

(1) the President, at the time of submission of the report required by section 2291h(a) of this title, makes a certification under subsection (b)(1)(A) or (b)(1)(B) of this section with respect to that country, and the Congress does not enact a joint resolution under subsection (d) of this section disapproving the determination of the President contained in that certification; or

(2) the President, at any other time, makes the certification described in subsection (b)(1)(B) of this section with respect to that country, except that this paragraph applies only if either—

(A) the President also certifies that—

(i) that country has undergone a fundamental change in government, or

(ii) there has been a fundamental change in the conditions that were the reason—

(I) why the President had not made a certification with respect to that coun-

try under subsection (b)(1)(A) of this section, or

(II) if he had made such a certification and the Congress enacted a joint resolution disapproving the determination contained in the certification, why the Congress enacted that joint resolution; or

(B) the Congress enacts a joint resolution approving the determination contained in the certification under subsection (b)(1)(B) of this section.

Any certification under subparagraph (A) of paragraph (2) shall discuss the justification for the certification.

(g) Senate procedures

Any joint resolution under this section shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

(h) Determining major drug-transit and major illicit drug producing countries

Not later than November 1 of each year, the President shall notify the appropriate committees of the Congress of which countries have been determined to be major drug-transit countries, and which countries have been determined to be major illicit drug producing countries, for purposes of this chapter.

(Pub. L. 87-195, pt. I, § 490, as added Pub. L. 102-583, § 5(a), Nov. 2, 1992, 106 Stat. 4924; amended Pub. L. 103-447, title I, § 101(g)(1), Nov. 2, 1994, 108 Stat. 4692; Pub. L. 104-66, title I, § 1112(d), Dec. 21, 1995, 109 Stat. 724; Pub. L. 109-177, title VII, § 722(b), Mar. 9, 2006, 120 Stat. 268.)

REFERENCES IN TEXT

Section 601(b) of the International Security Assistance and Arms Export Control Act of 1976, referred to in subsec. (g), is section 601(b) of Pub. L. 94-329, title VI, June 30, 1976, 90 Stat. 765, which is not classified to the Code.

This chapter, referred to in subsec. (h), was in the original “this Act”, meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-177, § 722(b)(1), substituted “major illicit drug producing country, major drug-transit country, or country identified pursuant to clause (i) or (ii) of section 2291h(a)(8)(A) of this title” for “major illicit drug producing country or major drug-transit country”.

Subsec. (a)(2). Pub. L. 109-177, § 722(b)(2), inserted “or country identified pursuant to clause (i) or (ii) of section 2291h(a)(8)(A) of this title” after “(as determined under subsection (h) of this section)”.

1995—Pub. L. 104-66, § 1112(d)(1), struck out “for fiscal year 1995” after “certification procedures” in section catchline.

Subsec. (i). Pub. L. 104-66, § 1112(d)(2), struck out heading and text of subsec. (i). Text read as follows: “This section applies only during fiscal year 1995. Section 2291k of this title does not apply during that fiscal year.”

1994—Pub. L. 103-447, § 101(g)(1)(A), substituted “for fiscal year 1995” for “for fiscal years 1993 and 1994” in section catchline.

Subsec. (a)(1). Pub. L. 103-447, § 101(g)(1)(B), struck out “(as determined under subsection (h) of this section)” after “drug-transit country”.

Subsec. (a)(2). Pub. L. 103-447, § 101(g)(1)(C), substituted “March 1” for “April 1”.

Subsec. (c). Pub. L. 103-447, § 101(g)(1)(D), substituted “that such country maintains licit production and stockpiles at levels no higher than those consistent with licit market demand, and has taken adequate steps to prevent significant diversion of its licit cultivation and production into the illicit markets and to prevent illicit cultivation and production.” for “that such country has taken adequate steps to prevent significant diversion of its licit cultivation and production into the illicit market, maintains production and stockpiles at levels no higher than those consistent with licit market demand, and prevents illicit cultivation and production.”

Subsec. (d). Pub. L. 103-447, § 101(g)(1)(E), substituted “30 calendar days” for “45 calendar days”.

Subsec. (g). Pub. L. 103-447, § 101(g)(1)(F), substituted “Senate procedures” for “Congressional review procedures” in heading, struck out designation and heading of par. (1), and struck out heading and text of par. (2). Text read as follows: “For the purpose of expediting the consideration and enactment of joint resolutions under this section, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.”

Subsec. (h). Pub. L. 103-447, § 101(g)(1)(G), struck out “for fiscal years 1993 and 1994” after “drug producing countries” in heading and substituted “November 1” for “January 1” in text.

Subsec. (i). Pub. L. 103-447, § 101(g)(1)(H), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: “This section applies only during fiscal years 1993 and 1994. During those fiscal years, section 2291k of this title does not apply and the definitions provided in section 2291(e)(2) and (5) of this title do not apply.”

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of this title.

CERTIFICATION FOR MAJOR ILLICIT DRUG PRODUCING AND DRUG TRANSIT COUNTRIES

Determination of President of the United States, No. 2001-12, Mar. 1, 2001, 66 F.R. 14454, provided:

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended [22 U.S.C. 2291j(b)(1)(A)] (the “Act”), I hereby determine and certify that the following major illicit drug producing and/or major illicit drug transit countries have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

The Bahamas, Bolivia, Brazil, People’s Republic of China, Colombia, Dominican Republic, Ecuador, Guatemala, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine and certify that, for the following major illicit drug producing and/or major illicit drug transit countries that do not qualify for certification under section 490(b)(1)(A), the vital national interests of the United States require that assistance not be withheld and that the United States not vote against multilateral development bank assistance:

Cambodia and Haiti

Analysis of the relevant U.S. vital national interests and risks posed thereto, as required under section 490(b)(3) of the Act, is attached for these countries [not set out in the Code].

I have determined that the following major illicit drug producing and/or major illicit drug transit coun-

tries do not meet the standards for certification set forth in section 490(b):

Afghanistan and Burma

In making these determinations, I have considered the factors set forth in section 490 of the Act, based on the information contained in the International Narcotics Control Strategy Report of 2001. Given that the performance of each of these countries has differed, I have attached an explanatory statement for each of the countries subject to this determination [not set out in the Code].

You are hereby authorized and directed to report this determination to the Congress immediately and to publish it in the Federal Register.

GEORGE W. BUSH.

Prior certifications for major narcotics producing and transit countries were contained in the following:

Determination of President of the United States, No. 2000-16, Feb. 29, 2000, 65 F.R. 15797.

Determination of President of the United States, No. 99-15, Feb. 26, 1999, 64 F.R. 11319.

Determination of President of the United States, No. 98-15, Feb. 26, 1998, 63 F.R. 12937.

Determination of President of the United States, No. 97-18, Feb. 28, 1997, 62 F.R. 11589.

Determination of President of the United States, No. 96-13, Mar. 1, 1996, 61 F.R. 9891.

Determination of President of the United States, No. 95-15, Feb. 28, 1995, 60 F.R. 12859.

Determination of President of the United States, No. 94-22, Apr. 1, 1994, 59 F.R. 17231.

Determination of President of the United States, No. 93-18, Mar. 31, 1993, 58 F.R. 19033.

Determination of President of the United States, No. 92-18, Feb. 28, 1992, 57 F.R. 8571.

Determination of President of the United States, No. 91-22, Mar. 1, 1991, 56 F.R. 10773.

Determination of President of the United States, No. 90-12, Feb. 28, 1990, 55 F.R. 10597.

Determination of President of the United States, No. 89-11, Feb. 28, 1989, 54 F.R. 9413.

Determination of President of the United States, No. 88-10, Feb. 29, 1988, 53 F.R. 11487.

PRESIDENTIAL DETERMINATION UNDER SECTION 490(b)(1)(A) OF THE FOREIGN ASSISTANCE ACT RELATING TO THE LARGEST EXPORTING AND IMPORTING COUNTRIES OF CERTAIN PRECURSOR CHEMICALS

Determination of President of the United States, No. 2007-14, Feb. 28, 2007, 72 F.R. 10881, provided:

Memorandum for the Secretary of State

Pursuant to section 490(b)(1)(A) of the Foreign Assistance Act, I hereby determine that the top five exporting and importing countries of pseudoephedrine and ephedrine in 2005 (Belgium, China, Germany, India, Indonesia, Mexico, Singapore, South Africa, South Korea, Switzerland, Taiwan, and the United Kingdom) have cooperated fully with the United States or have taken adequate steps on their own to achieve full compliance with the goals and objectives established by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

You are directed to publish this determination in the Federal Register, and are authorized and directed to transmit to the Congress the report under section 722 of the Combat Methamphetamine Epidemic Act [of 2005].

GEORGE W. BUSH.

§ 2291j-1. International drug control certification procedures

During any fiscal year, funds that would otherwise be withheld from obligation or expenditure under section 2291j of this title may be obligated or expended beginning October 1 of such fiscal year provided that:

(1) Report

Not later than September 15 of the previous fiscal year the President has submitted to the

appropriate congressional committees a report identifying each country determined by the President to be a major drug transit country or major illicit drug producing country as defined in section 2291(e) of this title.

(2) Designation and justification

In each report under paragraph (1), the President shall also—

(A) designate each country, if any, identified in such report that has failed demonstrably, during the previous 12 months, to make substantial efforts—

(i) to adhere to its obligations under international counternarcotics agreements; and

(ii) to take the counternarcotics measures set forth in section 2291h(a)(1) of this title; and

(B) include a justification for each country so designated.

(3) Limitation on assistance for designated countries

In the case of a country identified in a report under paragraph (1) that is also designated under paragraph (2) in the report, United States assistance may be provided to such country in the subsequent fiscal year only if the President determines and reports to the appropriate congressional committees that—

(A) provision of such assistance to the country in such fiscal year is vital to the national interests of the United States; or

(B) subsequent to the designation being made under paragraph (2)(A), the country has made substantial efforts—

(i) to adhere to its obligations under international counternarcotics agreements; and

(ii) to take the counternarcotics measures set forth in section 2291h(a)(1) of this title.

(4) International counternarcotics agreement defined

In this section, the term “international counternarcotics agreement” means—

(A) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; or

(B) any bilateral or multilateral agreement in force between the United States and another country or countries that addresses issues relating to the control of illicit drugs, such as—

(i) the production, distribution, and interdiction of illicit drugs;

(ii) demand reduction;

(iii) the activities of criminal organizations;

(iv) international legal cooperation among courts, prosecutors, and law enforcement agencies (including the exchange of information and evidence);

(v) the extradition of nationals and individuals involved in drug-related criminal activity;

(vi) the temporary transfer for prosecution of nationals and individuals involved in drug-related criminal activity;