

under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

**§ 2357. Furnishing of services and commodities**

**(a) Advance-of-funds or reimbursement basis**

Whenever the President determines it to be consistent with and in furtherance of the purposes of subchapter I of this chapter and within the limitations of this chapter, any agency of the United States Government is authorized to furnish services and commodities on an advance-of-funds or reimbursement basis to friendly countries, international organizations, the American Red Cross, and voluntary nonprofit relief agencies registered with and approved by the Agency for International Development (including foreign voluntary nonprofit relief agencies so registered and approved when no United States voluntary nonprofit relief agency is available). Such advances or reimbursements may be credited to the currently applicable appropriation, account, or fund of the agency concerned and shall be available for the purposes for which such appropriation, account, or fund is authorized to be used, under the following circumstances:

(1) Advances or reimbursements which are received under this section within one hundred and eighty days after the close of the fiscal year in which such services and commodities are delivered.

(2) Advances or reimbursements received pursuant to agreements executed under this section in which reimbursement will not be completed within one hundred and eighty days after the close of the fiscal year in which such services and commodities are delivered: *Provided*, That such agreements require the payment of interest at the current rate established pursuant to section 635(b)(1)(B) of title 12, and repayment of such principal and interest does not exceed a period of three years from the date of signing of the agreement to provide the service: *Provided further*, That funds available for this paragraph in any fiscal year shall not exceed \$1,000,000 of the total funds authorized for use in such fiscal year by part I of subchapter I of this chapter, and shall be available only to the extent provided in appropriation Acts. Interest shall accrue as of the date of disbursement to the agency or organization providing such services.

**(b) Agency contracts with individuals to perform services**

When any agency of the United States Government provides services on an advance-of-funds or reimbursable basis under this section, such agency may contract with individuals for personal service abroad or in the United States to perform such services or to replace officers or employees of the United States Government who are assigned by the agency to provide such services. Such individuals shall not be regarded as employees of the United States Government for

the purpose of any law administered by the Director of the Office of Personnel Management.

**(c) Excess property**

(1) Except as provided in subsection (d) of this section, no Government-owned excess property shall be made available under this section, section 2358 of this title, or otherwise in furtherance of the purposes of subchapter I of this chapter, unless, before the shipment of such property for use in a specified country (or transfer, if the property is already in such country), the agency administering such subchapter I has approved such shipment (or transfer) and made a written determination—

(A) that there is a need for such property in the quantity requested and that such property is suitable for the purpose requested;

(B) as to the status and responsibility of the designated end-user and his ability effectively to use and maintain such property; and

(C) that the residual value, serviceability, and appearance of such property would not reflect unfavorably on the image of the United States and would justify the costs of packing, crating, handling, transportation, and other accessorial costs, and that the residual value at least equals the total of these costs.

(2) For purposes of transferring property described in this subsection in furtherance of the provisions of part VIII of subchapter I of this chapter, the phrase “the agency administering such subchapter I” shall be considered to refer to the Department of State.

**(d) Transfer of Government-owned excess property to enhance environmental protection in foreign countries**

The Secretary of State, acting through the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, is authorized to transfer to any friendly country, international organization, the American Red Cross, or other voluntary nonprofit relief agency described in subsection (a) of this section, Government-owned excess property made available under this section or section 2358 of this title in order to support activities carried out under subchapter I of this chapter which are designed to enhance environmental protection in foreign countries if the Secretary of State makes a written determination—

(1) that there is a need for such property in the quantity requested and that such property is suitable for the purpose requested;

(2) as to the status and responsibility of the designated end-user and his ability effectively to use and maintain such property; and

(3) that the residual value, serviceability, and appearance of such property would not reflect unfavorably on the image of the United States and would justify the costs of packing, crating, handling, transportation, and other accessorial costs, and that the residual value at least equals the total of these costs.

(Pub. L. 87-195, pt. III, § 607, Sept. 4, 1961, 75 Stat. 441; Pub. L. 90-554, pt. III, § 301(b), Oct. 8, 1968, 82 Stat. 963; Pub. L. 94-161, title III, § 315, Dec. 20, 1975, 89 Stat. 867; Pub. L. 95-88, title I, § 122(a), Aug. 3, 1977, 91 Stat. 541; Pub. L. 95-424, title V, § 503, Oct. 6, 1978, 92 Stat. 959; 1978 Reorg. Plan

No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 96-53, title I, §121, Aug. 14, 1979, 93 Stat. 366; Pub. L. 99-93, title I, §129, Aug. 16, 1985, 99 Stat. 419.)

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), 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.

#### REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§2346 et seq.), VI (§2348 et seq.), and VIII (§2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

#### REFERENCES TO PART I DEEMED TO INCLUDE SECTION 2293

References to part I of subchapter I of this chapter are deemed to include a reference to section 2293 of this title. See section 2293(d)(1) of this title.

#### AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-93, §129(1)(A), (B), designated existing provisions of subsec. (c) as par. (1), redesignated existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, and in introductory provisions of par. (1) as so designated substituted "Except as provided in subsection (d) of this section, no" for "No".

Subsec. (c)(2). Pub. L. 99-93, §129(1)(C), added par. (2).

Subsec. (d). Pub. L. 99-93, §129(2), added subsec. (d).

1979—Subsec. (a). Pub. L. 96-53 substituted "Agency for International Development" for "Advisory Committee on Voluntary Foreign Aid".

1978—Subsecs. (b), (c). Pub. L. 95-424 added subsec. (b) and redesignated former subsec. (b) as (c).

1977—Subsec. (a). Pub. L. 95-88 inserted "(including foreign voluntary nonprofit relief agencies so registered and approved when no United States voluntary nonprofit relief agency is available)" after "and voluntary nonprofit relief agencies registered with and approved by the Advisory Committee on Voluntary Foreign Aid" in provisions preceding par. (1).

1975—Subsec. (a). Pub. L. 94-161 substituted "currently" for "current", incorporated text following "Such advances or reimbursements" in provisions designated cl. (1) and added cl. (2).

1968—Pub. L. 90-554 designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-53 effective Oct. 1, 1979, see section 512(a) of Pub. L. 96-53, set out as a note under section 2151 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-424 effective Oct. 1, 1978, see section 605 of Pub. L. 95-424, set out as a note under section 2151 of this title.

#### REGULATIONS

Pub. L. 95-88, title I, §122(b), Aug. 3, 1977, 91 Stat. 541, provided that: "For purposes of implementing the amendment made by subsection (a) [amending this section], the President shall issue regulations governing registration with and approval by the Advisory Committee on Voluntary Foreign Aid of foreign voluntary nonprofit agencies."

#### TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec.

(b) pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

#### AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

#### 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.

#### DELEGATION OF AUTHORITY

Memorandum of President of the United States, Feb. 16, 1995, 60 F.R. 10793, provided:

Memorandum for the Secretary of State [and] the Administrator of the Agency for International Development

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate as follows certain authorities vested in the President:

(A) the functions under section 607 of the Foreign Assistance Act of 1961, as amended (FAA) [22 U.S.C. 2357], to the Secretary of State and to the Administrator of the Agency for International Development, respectively, for matters within their respective areas of responsibility; and

(B) the functions in the first proviso under the heading "Population, Development Assistance," contained in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1995 (Public Law 103-306) [108 Stat. 1611], and in comparable provisions in successor legislation, to the Secretary of State relating to those organizations and programs for which the Secretary of State has funding responsibility.

The delegations of authority described in subparagraph (A) are in addition to other delegations of such authority to the International Development Cooperation Agency.

The delegation of authority described above in subparagraph (B) shall be exercised in lieu of the delegation of the comparable authority to the Administrator of the Agency for International Development by section 1-102(a)(7) of Executive Order No. 12163, as amended [22 U.S.C. 2381 note].

Any reference in this memorandum to any Act, order, determination, or delegation of authority shall be deemed to be a reference to such Act, order, determination, or delegation of authority as amended from time to time.

The functions delegated by this memorandum may be redelegated within the Department of State or the Agency for International Development, as appropriate.

The Secretary of State is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by

appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

### § 2358. Foreign and domestic excess property

#### (a) Advance acquisition of property; special account for payment of costs; limitation; use of property

It is the sense of the Congress that in furnishing assistance under subchapter I of this chapter excess personal property, or (if a substantial savings would occur) other property already owned by an agency of the United States Government, shall be utilized wherever practicable in lieu of or supplementary to the procurement of new items for United States-assisted projects and programs. The President is authorized to maintain in a separate account, which shall, notwithstanding section 1535(d) of title 31, be free from fiscal year limitation, \$5,000,000 of funds made available under part I of subchapter I of this chapter, which may be used to pay costs (including personnel costs) of acquisition, storage, renovation and rehabilitation, packing, crating, handling, transportation, and related costs of property classified as domestic or foreign excess property pursuant to chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, any property available from an agency of the United States Government, or other property, in advance of known requirements therefor for use in furtherance of the purposes of subchapter I of this chapter: *Provided*, That the amount of property classified as domestic excess property pursuant to chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 held at any one time pursuant to this section shall not exceed \$15,000,000 in total original acquisition cost. Property acquired pursuant to the preceding sentence may be furnished (1) pursuant to any provision of subchapter I of this chapter for which funds are authorized for the furnishing of assistance, in which case the separate account established pursuant to this section shall be repaid from funds made available for such provision for all costs incurred, or (2) pursuant to section 2357 of this title, in which case such separate account shall be repaid in accordance with the provisions of that section for all costs incurred.

#### (b) Transfer of domestic excess property

Property classified as domestic excess property under chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 shall not be transferred to the agency primarily responsible for administering subchapter I of this chapter for use pursuant to the provisions of subchapter I of this chapter or section 2357 of this title unless (1) such property is transferred for use exclusively by an agency of the United States Government, or (2) it has been determined in the same manner as provided for surplus property in section 549(a) to (e) of title 40, that such property is not needed for donation

pursuant to those subsections. The foregoing restrictions shall not apply to the transfer in any fiscal year for use pursuant to the provisions of subchapter I of this chapter of amounts of such property with a total original acquisition cost to the United States Government not exceeding \$45,000,000.

(Pub. L. 87-195, pt. III, § 608, Sept. 4, 1961, 75 Stat. 441; Pub. L. 89-583, pt. III, § 301(c), Sept. 19, 1966, 80 Stat. 804; Pub. L. 90-137, pt. III, § 301(b), Nov. 14, 1967, 81 Stat. 458; Pub. L. 95-424, title I, § 102(g)(2)(C), Oct. 6, 1978, 92 Stat. 942; Pub. L. 97-113, title VII, § 701, Dec. 29, 1981, 95 Stat. 1543.)

#### REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

#### REFERENCES TO PART I DEEMED TO INCLUDE SECTION 2293

References to part I of subchapter I of this chapter are deemed to include a reference to section 2293 of this title. See section 2293(d)(1) of this title.

#### CODIFICATION

In text, “chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for references to the Federal Property and Administrative Services Act of 1949, as amended, on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a), “section 1535(d) of title 31” substituted for “section 1210 of the General Appropriation Act, 1951 (64 Stat. 765) [31 U.S.C. 686-1]” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (b), “section 549(a) to (e) of title 40” substituted for “section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended” and “those subsections” substituted for “that subsection” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

#### AMENDMENTS

1981—Subsec. (a). Pub. L. 97-113 authorized for subchapter I assistance use of property already owned by an agency of the United States (if a substantial savings would occur) as supplementary to procurement of new items for United States-assisted projects and programs and use of separate account funds for payment of costs of any property available from an agency of the United States.

1978—Subsec. (a). Pub. L. 95-424 substituted “part 1 of subchapter 1 of this chapter” for “section 2172 of this title”.

1967—Subsec. (a). Pub. L. 90-137 required, in furnishing assistance under subchapter I of this chapter, utilization of excess personal property wherever practicable in lieu of new items for United States-assisted projects and programs.

1966—Subsec. (a). Pub. L. 89-583 permitted personnel costs attributable to the excess property program to be charged to the separate account for the advance acquisition of property.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-424 effective Oct. 1, 1978, see section 605 of Pub. L. 95-424, set out as a note under section 2151 of this title.