

§ 1736a. Administrative provisions**(a) Subchapter II programs****(1) Acquisitions**

The importing country or private entity that enters into an agreement under subchapter II of this chapter shall acquire the agricultural commodities to be financed under subchapter II of this chapter.

(2) Invitation for bid

No purchase of agricultural commodities from private stock or purchase of ocean transportation shall be financed under subchapter II of this chapter unless such purchases are made on the basis of an invitation for bid that is publicly advertised in the United States, and on the basis of bid offerings that shall conform to such invitation and be received and publicly opened in the United States. All awards in the purchase of commodities or ocean transportation financed under subchapter II of this chapter shall be consistent with open, competitive, and responsive bid procedures, as determined appropriate by the Secretary. Resulting contracts may contain such terms and conditions as the Secretary determines are necessary and appropriate.

(b) Agents**(1) Authority of Secretary or Commodity Credit Corporation****(A) General rule**

Except as provided in subparagraph (B), if it is determined appropriate, the Secretary or the Commodity Credit Corporation may serve as the purchasing or shipping agent, or both, for the importer or importing country in arranging the purchase or shipping of commodities financed under subchapter II of this chapter.

(B) Exception

Notwithstanding subparagraph (A), the Secretary or the Commodity Credit Corporation may award, under a competitive bidding process, contracts for establishing freight agents who shall act on behalf of the Secretary or the Corporation to handle the shipping of commodities financed under this chapter.

(C) Avoidance of conflict of interest of contractors

Freight agents employed by the Secretary or the Commodity Credit Corporation under subchapter II of this chapter shall not represent any foreign government during the period of their contract with the United States Government.

(2) Reasonable fees and commissions**(A) Fees**

Notwithstanding any other provision of law, the Secretary or the Commodity Credit Corporation may enter into an agreement with the importer or importing country that contains the terms and conditions that will govern the provision of purchasing or shipping agent services by the Secretary or the Corporation, including the establishment of

fees for such services. Any such fees shall be fair and reasonable in relation to the services performed and shall be available as reimbursement for costs incurred in providing such services.

(B) Prohibition on commissions

Commissions, fees, or other payments to any selling agent or to any agent of a purchaser shall be prohibited in the purchase of agricultural commodities that are financed under subchapter II of this chapter.

(3) Limitations

No commission, fees, or other payments to an agent, broker, consultant, or other representative of the importer or importing country for ocean transportation brokerage services in connection with the carriage of commodities provided under subchapter II of this chapter may—

(A) be paid in excess of an amount determined appropriate by the Secretary; and

(B) be shared by such person with the importer or importing country or any agent thereof.

(4) Avoidance of conflict of interest

A person may not be an agent, broker, consultant, or other representative of the United States Government, an importer, or an importing country in connection with agricultural commodities provided under this chapter during a fiscal year in which such person provides or acts as an agent, broker, consultant, or other representative of a person engaged in providing ocean transportation or transportation-related services for such commodities. For the purpose of this paragraph, the term “transportation-related services” means lightening, stevedoring, bagging, or inland transportation to the destination point.

(c) Subchapters III and III-A program**(1) Acquisition****(A) In general**

The Administrator shall transfer, arrange for the transportation, and take other steps necessary to make available agricultural commodities to be provided under subchapter III and subchapter III-A of this chapter.

(B) Certain commodities made available for nonemergency assistance

In the case of agricultural commodities made available for nonemergency assistance under subchapter III of this chapter for least developed countries that meet the poverty and other eligibility criteria established by the International Bank for Reconstruction and Development for financing under the International Development Association, the Administrator may pay the transportation costs incurred in moving the agricultural commodities from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs.

(2) Freight procurement

Notwithstanding 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 or other similar provisions of law relating to the making or performance of Federal Government contracts, ocean transportation under subchapters III and III-A of this chapter may be procured on the basis of full and open competitive procedures. Resulting contracts may contain such terms and conditions as the Administrator determines are necessary and appropriate.

(3) Avoidance of conflict of interest

Freight agents employed by the Agency for International Development under subchapters III and III-A of this chapter shall not represent any foreign government during the period of their contract with the United States Government.

(4) Positioning

(A) In general

Funds made available for fiscal years 2001 through 2012 to carry out subchapters III and III-A of this chapter may be used by the Administrator to procure, transport, and store agricultural commodities for prepositioning within the United States and in foreign countries, except that for each such fiscal year not more than \$10,000,000 of such funds may be used to store agricultural commodities for prepositioning in foreign countries.

(B) Additional prepositioning sites

(i) Feasibility assessments

The Administrator may carry out assessments for the establishment of not less than 2 sites to determine the feasibility of, and costs associated with, using the sites to store and handle agricultural commodities for prepositioning in foreign countries.

(ii) Establishment of sites

Based on the results of each assessment carried out under clause (i), the Administrator may establish additional sites for prepositioning in foreign countries.

(5) Nonemergency or multiyear agreements

Annual resource requests for ongoing non-emergency or ongoing multiyear agreements under subchapter III shall be finalized not later than October 1 of the fiscal year in which the agricultural commodities will be shipped under the agreement.

(d) Timing of shipments

In determining the timing of the shipment of agricultural commodities to be provided under this chapter, the Secretary or the Administrator, as appropriate, shall consider—

- (1) the time of harvest of any competing commodities in the recipient country; and
- (2) such other concerns determined to be appropriate.

(e) Deadline for agreements under subchapters II and III-A of this chapter

An agreement under subchapters II and III-A of this chapter shall, to the extent practicable, be entered into not later than—

- (1) November 30 of the first fiscal year in which agricultural commodities are to be shipped under the agreement; or

(2) 60 days after the date of enactment of the annual Rural Development, Agriculture, and Related Agencies Appropriations Act for the first fiscal year in which agricultural commodities are to be shipped under the agreement,

whichever is later.

(f) Annual reports

(1) Annual report regarding agricultural trade programs and activities

(A) Annual report

Not later than April 1 of each fiscal year, the Administrator and the Secretary shall jointly prepare and submit to the appropriate committees of Congress a report regarding each program and activity carried out under this chapter during the prior fiscal year.

(B) Contents

An annual report described in subparagraph (A) shall include, with respect to the prior fiscal year—

(i) a list that contains a description of each country and organization that receives food and other assistance under this chapter (including the quantity of food and assistance provided to each country and organization);

(ii) a general description of each project and activity implemented under this chapter (including each activity funded through the use of local currencies);

(iii) a statement describing the quantity of agricultural commodities made available to each country pursuant to—

(I) section 1431(b) of this title; and

(II) the Food for Progress Act of 1985 (7 U.S.C. 1736o);

(iv) an assessment of the progress made through programs under this chapter towards reducing food insecurity in the populations receiving food assistance from the United States;

(v) a description of efforts undertaken by the Food Aid Consultative Group under section 1725 of this title to achieve an integrated and effective food assistance program;

(vi) an assessment of—

(I) each program oversight, monitoring, and evaluation system implemented under section 1726a(f) of this title; and

(II) the impact of each program oversight, monitoring, and evaluation system on the effectiveness and efficiency of assistance provided under this subchapter; and

(vii) an assessment of the progress made by the Administrator in addressing issues relating to quality with respect to the provision of food assistance.

(2) Annual report regarding the provision of agricultural commodities to foreign countries

(A) Annual report

Not later than February 1 of each fiscal year, the Administrator shall prepare and

submit to the appropriate committees of Congress a report regarding the administration of food assistance programs under subchapter III to benefit foreign countries during the prior fiscal year.

(B) Contents

An annual report described in subparagraph (A) shall include, with respect to the prior fiscal year—

(i) a list that contains a description of each program, country, and commodity approved for assistance under section 1726a of this title; and

(ii) a statement that contains a description of the total amount of funds approved for transportation and administrative costs under section 1726a of this title.

(July 10, 1954, ch. 469, title IV, §407, as added Pub. L. 89–808, §2(E), Nov. 11, 1966, 80 Stat. 1537; amended Pub. L. 90–436, §8, July 29, 1968, 82 Stat. 451; Pub. L. 94–161, title II, §210, Dec. 20, 1975, 89 Stat. 854; Pub. L. 101–508, title I, §1204(b)(3), Nov. 5, 1990, 104 Stat. 1388–11; Pub. L. 101–624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3650; Pub. L. 102–237, title III, §§319, 324, 325, 328, 329, 332, Dec. 13, 1991, 105 Stat. 1857, 1858; Pub. L. 104–66, title I, §1011(e), Dec. 21, 1995, 109 Stat. 709; Pub. L. 104–127, title II, §216, Apr. 4, 1996, 110 Stat. 957; Pub. L. 106–472, title III, §310(b), Nov. 9, 2000, 114 Stat. 2076; Pub. L. 107–171, title III, §§3010, 3011, May 13, 2002, 116 Stat. 284; Pub. L. 110–246, title III, §§3017, 3018(a), June 18, 2008, 122 Stat. 1827.)

REFERENCES IN TEXT

The Food for Progress Act of 1985, referred to in subsec. (f)(1)(B)(iii)(II), is Pub. L. 99–198, title XI, §1110, Dec. 23, 1985, 99 Stat. 1472, which is classified to section 1736o of this title.

CODIFICATION

In subsec. (c)(2), “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 “the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” 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.

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–246, §3017(1), designated existing provisions as subpar. (A), inserted heading, substituted “2012” for “2007” and “\$10,000,000” for “\$2,000,000”, and added subpar. (B).

Subsec. (c)(5). Pub. L. 110–246, §3017(2), added par. (5).

Subsec. (f). Pub. L. 110–246, §3018(a), added subsec. (f) and struck out former subsec. (f) which directed President to prepare an annual report concerning programs and activities implemented under this chapter for the preceding fiscal year, described contents of report, and directed that it be submitted not later than Jan. 15 of each year to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

2002—Subsec. (c)(1). Pub. L. 107–171, §3011, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(4). Pub. L. 107–171, §3010, substituted “through 2007” for “and 2002”.

2000—Subsec. (c)(4). Pub. L. 106–472 added par. (4).

1996—Pub. L. 104–127, §216(2)–(5), which directed amendment of subsecs. (c), (d), (g), and (h), respec-

tively, of this section, was executed to subsecs. (b), (c), (f), and (g), respectively, of this section, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 104–66 which struck out subsec. (b) and redesignated subsecs. (c) to (h) as (b) to (g), respectively. See 1995 Amendment note below.

Subsec. (a)(1). Pub. L. 104–127, §216(1)(A), inserted “or private entity that enters into an agreement under subchapter II of this chapter” after “importing country”.

Subsec. (a)(2). Pub. L. 104–127, §216(1)(B), inserted at end “Resulting contracts may contain such terms and conditions as the Secretary determines are necessary and appropriate.”

Subsec. (b)(1)(A), (2)(A). Pub. L. 104–127, §216(2), inserted “importer or” before “importing country”.

Subsec. (c)(2). Pub. L. 104–127, §216(3)(A), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “No purchase of agricultural commodities from private stocks or purchase of ocean transportation services by the United States Government shall be financed under subchapters III and III–A of this chapter unless such purchases are made on the basis of full and open competition utilizing such procedures as are determined necessary and appropriate by the Administrator.”

Subsec. (c)(4). Pub. L. 104–127, §216(3)(B), struck out heading and text of par. (4). Text read as follows: “Notwithstanding any provision of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) or other similar provisions relating to the making or performance of Federal Government contracts, the Administrator may procure ocean transportation services under this chapter under such full and open competitive procedures as the Administrator determines are necessary and appropriate.”

Subsec. (f)(2)(D). Pub. L. 104–127, §216(4), added subpar. (D).

Subsec. (g). Pub. L. 104–127, §216(5), struck out heading and text of subsec. (g). Text read as follows: “On World Food Day, October 16 of each year, the President shall submit to the appropriate committees of Congress a report, prepared with the assistance of the Secretary and the Administrator, assessing progress towards food security in each country receiving United States Government food assistance. Special emphasis should be given in such report to the nutritional status of the poorest populations in such countries.”

1995—Subsecs. (b) to (h). Pub. L. 104–66 redesignated subsecs. (c) to (h) as (b) to (g), respectively, and struck out former subsec. (b) which required reporting of agricultural commodity or ocean transportation supplier fees.

1991—Subsec. (b)(1). Pub. L. 102–237, §329, struck out “or agricultural commodity donated” after “ocean transportation financed”.

Subsec. (c)(1)(A). Pub. L. 102–237, §324, substituted “subchapter II of this chapter” for “this section”.

Subsec. (c)(1)(C). Pub. L. 102–237, §325, struck out “other” before “foreign government”.

Subsec. (c)(2)(B), (3). Pub. L. 102–237, §319, inserted “subchapter II of” before “this chapter”.

Subsec. (c)(4). Pub. L. 102–237, §328(a), inserted “provides or” after “in which such person” and substituted “of a person” for “if the person is”.

Subsec. (d)(3). Pub. L. 102–237, §328(b), struck out “other” before “foreign government”.

Subsec. (d)(4). Pub. L. 102–237, §332, substituted “the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” for “the Federal Property Act of 1949, as amended.”

1990—Pub. L. 101–624 amended section generally, substituting present provisions for provisions which established an Advisory Committee to survey the general policies relating to the administration of this chapter, including implementation of self-help provisions, uses to be made of foreign currencies, amount of currencies to be reserved in sales agreements for loans to private industry, rates of exchange, interest rates, and terms under which dollar credit sales are made.

Subsec. (c)(4). Pub. L. 101–508 substituted “providing ocean transportation or” for “providing ocean”.

1975—Pub. L. 94-161 inserted “, or their designees (who shall be members of such committees or, in the case of members from the executive branch, who shall have been confirmed by the Senate)” in first sentence.

1968—Pub. L. 90-436 struck out provisions that the vice chairman and one ranking minority member of the specified House committees and the next ranking majority member and one ranking minority member of the specified Senate committees be members of the Advisory Committee, and inserted provisions requiring the Advisory Committee to meet not less than four times during each calendar year and setting forth the order of precedence at such meetings.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101-624 effective Jan. 1, 1991, see section 1513 of Pub. L. 101-624, set out as a note under section 1691 of this title.

Amendment by Pub. L. 101-508 effective Nov. 29, 1990, see section 1301 of Pub. L. 101-508, set out as an Effective Date note under section 940d of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1967, see section 5 of Pub. L. 89-808, set out as an Effective Date of 1966 Amendment note under section 1691 of this title.

PREPARATION OF ANNUAL REPORT

For provisions requiring Food Assistance Policy Council to prepare annual report pursuant to subsec. (g)(1) [now (f)(1)] of this section, see Ex. Ord. No. 12752, §3(c), Feb. 25, 1991, 56 F.R. 8256, set out as a note under section 1691 of this title.

§ 1736b. Expiration date

No agreements to finance sales or to provide other assistance under this chapter shall be entered into after December 31, 2012.

(July 10, 1954, ch. 469, title IV, §408, as added Pub. L. 89-808, §2(E), Nov. 11, 1966, 80 Stat. 1537; amended Pub. L. 94-161, title II, §211, Dec. 20, 1975, 89 Stat. 854; Pub. L. 95-88, title II, §213, Aug. 3, 1977, 91 Stat. 551; Pub. L. 95-113, title XII, §1207, Sept. 29, 1977, 91 Stat. 957; Pub. L. 96-470, title II, §213, Oct. 19, 1980, 94 Stat. 2246; Pub. L. 97-98, title XII, §1215, Dec. 22, 1981, 95 Stat. 1282; Pub. L. 99-83, title X, §1006, Aug. 8, 1985, 99 Stat. 271; Pub. L. 101-624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3653; Pub. L. 104-127, title II, §217, Apr. 4, 1996, 110 Stat. 957; Pub. L. 107-171, title III, §3012, May 13, 2002, 116 Stat. 284; Pub. L. 110-246, title III, §3019, June 18, 2008, 122 Stat. 1828.)

PRIOR PROVISIONS

Provisions covering the termination date for agreements to finance sales under subchapter II and programs of assistance under subchapter III were covered by section 1736c of this title prior to amendment of that section by Pub. L. 101-624, and by sections 1709, 1724 of this title prior to the amendment of those sections by Pub. L. 89-808.

AMENDMENTS

2008—Pub. L. 110-246 substituted “2012” for “2007”.

2002—Pub. L. 107-171 substituted “2007” for “2002”.

1996—Pub. L. 104-127 substituted “2002” for “1995”.

1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions relating to Presidential reports to Congress concerning activities carried out under this chapter, a global assessment of

food production and needs and planned programming of food assistance, and a comparative cross-country evaluation of programs conducted under portions of this chapter, provisions requiring the Secretary to issue revised regulations governing operations of subchapter II of this chapter, and provisions relating to the delivery of bagged commodities.

1985—Subsec. (b). Pub. L. 99-83 inserted reference to subchapter III in two places.

1981—Subsec. (a). Pub. L. 97-98 substituted “February 15” for “April 1”.

1980—Subsec. (b). Pub. L. 96-470 struck out requirement that the President submit a report not later than March 31 of each year.

1977—Subsec. (b). Pub. L. 95-88 substituted provisions that, not later than September 30 of each year, the President submit to the Congress a report containing a global assessment of food production and needs and setting forth planned programming of food assistance under subchapter II of this chapter for the coming fiscal year, and that, not later than December 31, March 31, and June 30 of each year, the President submit a report to the Congress showing the current status of planned programming of food assistance under subchapter II of this chapter for the current fiscal year, for provisions that, in his presentation to the Congress of planned programming of food assistance for each fiscal year, the President include a global assessment of food production and needs, self-help steps which are being taken by food-short countries under section 1709(a) of this title, steps which are being taken to encourage other countries to increase their participation in food assistance or the financing of food assistance, and the relationship between food assistance provided to each country under this chapter and other foreign assistance provided to such country by the United States and other donors.

Subsec. (c). Pub. L. 95-88 substituted provisions that, beginning Oct. 1, 1978, and at each five-year interval thereafter, the President submit to the Congress a comparative cross-country evaluation of programs conducted under subchapters I, III, and III-A of this chapter, and that such evaluations cover no fewer than five countries sampled from the developing regions (Asia, Africa, Latin America, and Caribbean), and assess the nutritional and other impacts, achievements, problems, and future prospects for programs thereunder, for provisions that, not later than November 1 of each calendar year the President submit to the House Committee on Agriculture, the House Committee on International Relations, the Senate Committee on Agriculture and Forestry, and the Senate Committee on Foreign Relations a revised global assessment of food production and needs, and revised planned programming of food assistance for the current fiscal year, to reflect, to the maximum extent feasible, the actual availability of commodities for food assistance.

Subsecs. (d), (e). Pub. L. 95-113 added subsecs. (d) and (e).

1975—Pub. L. 94-161 designated existing provisions as subsec. (a), substituted “fiscal” for “calendar” in first sentence, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-246 effective May 22, 2008, see section 4(b) of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-624 effective Jan. 1, 1991, see section 1513 of Pub. L. 101-624, set out as a note under section 1691 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 Title 22, Foreign Relations and Intercourse.