

of Pub. L. 102-549, Oct. 28, 1992, 106 Stat. 3658, known as the Aid, Trade, and Competitiveness Act of 1992, which enacted sections 2421a to 2421e of this title and provisions set out as notes under section 2421a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2421a of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Aid, Trade, and Competitiveness Act of 1992 and also as part of the Jobs Through Exports Act of 1992, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

### § 2421d. Funding for capital projects

#### (a) Funding level

The Congress strongly urges the President to use at least \$650,000,000 for fiscal year 1993 and at least \$700,000,000 for fiscal year 1994 of the total amounts made available for assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2346 et seq.] (relating to the economic support fund), assistance under the Support for East European Democracy (SEED) Act of 1989 [22 U.S.C. 5401 et seq.], assistance under the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, and assistance under the Multilateral Assistance Initiative for the Philippines, for grants for developmentally sound capital projects. Such grants may be combined with financing offered by private financial entities or other entities.

#### (b) Development assistance capital projects

Funds appropriated to carry out chapter 1 or chapter 10 of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq., 2293 et seq.] (relating to development assistance and the Development Fund for Africa) may not be used for capital projects that do not meet the criteria contained in section 2421b of this title. This subsection does not apply with respect to capital projects for which funds have been obligated or expended before October 28, 1992.

(Pub. L. 102-549, title III, § 306, Oct. 28, 1992, 106 Stat. 3660.)

#### REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsecs. (a) and (b), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 10 of part I of the Act is classified generally to part X (§ 2293 et seq.) of subchapter I of chapter 32 of this title. Chapter 4 of part II of the Act is classified generally to part IV (§ 2346 et seq.) of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Support for East European Democracy (SEED) Act of 1989, referred to in subsec. (a), is Pub. L. 101-179, Nov. 28, 1989, 103 Stat. 1298, which is classified principally to chapter 63 (§ 5401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5401 of this title and Tables.

The Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, referred to in subsec. (a), is Pub. L. 102-511, Oct. 24, 1992, 106 Stat. 3320, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Aid, Trade, and Competitiveness Act of 1992 and also as part of the Jobs

Through Exports Act of 1992, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

### § 2421e. Definitions

For purposes of sections 2421a to 2421e of this title—

(1) the term “AID” means the Agency for International Development; and

(2) the term “capital project” means a project involving the construction, expansion, alteration of, or the acquisition of equipment for, a physical facility or physical infrastructure, including related engineering design (concept and detail) and other services, the procurement of equipment (including any related services), and feasibility studies or similar engineering and economic services.

(Pub. L. 102-549, title III, § 308, Oct. 28, 1992, 106 Stat. 3660.)

#### REFERENCES IN TEXT

Sections 2421a to 2421e of this title, referred to in text, was in the original “this title” meaning title III of Pub. L. 102-549, Oct. 28, 1992, 106 Stat. 3658, known as the Aid, Trade, and Competitiveness Act of 1992, which enacted sections 2421a to 2421e of this title and provisions set out as notes under section 2421a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2421a of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Aid, Trade, and Competitiveness Act of 1992 and also as part of the Jobs Through Exports Act of 1992, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

### § 2421f. Sustainability requirements for certain capital projects in connection with overseas contingency operations

#### (a) Limitation

##### (1) In general

Commencing 60 days after January 2, 2013—

(A) amounts authorized to be appropriated for the Department of Defense may not be obligated or expended for a capital project described in subsection (b) unless the Secretary of Defense, in consultation with the United States commander of military operations in the country in which the project will be carried out, completes an assessment on the necessity and sustainability of the project;

(B) amounts authorized to be appropriated for the Department of State may not be obligated or expended for a capital project described in subsection (b) unless the Secretary of State, in consultation with the Chief of Mission in the country in which the project will be carried out, completes an assessment on the necessity and sustainability of the project; and

(C) amounts authorized to be appropriated for the United States Agency for International Development may not be obligated or expended for a capital project described in subsection (b) unless the Administrator of the United States Agency for International Development, in consultation with the Mis-

sion Director and the Chief of Mission in the country in which the project will be carried out, completes an assessment on the necessity and sustainability of the project.

**(2) Elements**

Each assessment on a capital project under this subsection shall include, but not be limited to, the following:

(A) An estimate of the total cost of the completed project to the United States.

(B) An estimate of the financial and other requirements necessary for the host government to sustain the project on an annual basis after completion of the project.

(C) An assessment whether the host government has the capacity (in both financial and human resources) to maintain and use the project after completion.

(D) A description of any arrangements for the sustainment of the project following its completion if the host government lacks the capacity (in financial or human resources) to maintain the project.

(E) An assessment whether the host government has requested or expressed its need for the project, and an explanation of the decision to proceed with the project absent such request or need.

(F) An assessment by the Secretary of Defense, where applicable, of the effect of the project on the military mission of the United States in the country concerned.

**(b) Covered capital projects**

**(1) In general**

Except as provided in paragraph (2), a capital project described in this subsection is any capital project overseas for an overseas contingency operation for the benefit of a host country and funded by the Department of Defense, the Department of State, or the United States Agency for International Development, as applicable, if the capital project—

(A) in the case of a project that directly supports building the capacity of indigenous security forces in the host country, has an estimated value in excess of \$10,000,000;

(B) in the case of any project not covered by subparagraph (A) that is to be funded by the Department of State or the United States Agency for International Development, has an estimated value in excess of \$5,000,000; or

(C) in the case of any other project, has an estimated value in excess of \$2,000,000.

**(2) Exclusion**

A capital project described in this subsection does not include any project for military construction (as that term is defined in section 114(b) of title 10) or a military family housing project under section 2821 of such title.

**(c) Waiver**

The Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development, as applicable, may waive the limitation in subsection (a) in order to initiate a capital project if such Secretary or the Administrator, as the case may

be, determines that the project is in the national security, diplomatic, or humanitarian interests of the United States. In the first report submitted under subsection (d) after any waiver under this subsection, such Secretary or the Administrator shall include a detailed justification of such waiver. Not later than 90 days after issuing a waiver under this subsection, such Secretary or the Administrator shall submit to the appropriate committees of Congress the assessment described in subsection (a) with respect to the capital project concerned.

**(d) Semi-annual reports**

**(1) In general**

Not later than 30 days after the end of any fiscal-year half-year in which the Secretary of Defense, the Secretary of State, or the Administrator of the United States Agency for International Development conducts an assessment under subsection (a), such Secretary or the Administrator, as the case may be, shall submit to the appropriate committees of Congress a report setting forth each assessment so conducted during such fiscal-year half-year, including the elements of each capital project so assessed specified in subsection (a)(2).

**(2) Additional elements**

In addition to the matters provided for in paragraph (1), each report under that paragraph shall include the following:

(A) For each capital project covered by such report, an evaluation (other than by amount of funds expended) of the effectiveness of such project, including, at a minimum, the following:

(i) The stated goals of the project.

(ii) The actions taken to assess and verify whether the project has met the stated goals of the project or is on track to meet such goals when completed.

(iii) The current and anticipated levels of involvement of local governments, communities, and individuals in the project.

(B) For each country or region in which a capital project covered by such report is being carried out, an assessment of the current and anticipated risks of corruption or fraud in connection with such project.

**(3) Form**

Each report shall be submitted in unclassified form, but may include a classified annex.

**(e) Definitions**

In this section:

(1) The term “appropriate committees of Congress” means—

(A) the Committee on Armed Services, the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Foreign Affairs, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(2) The term “capital project” has the meaning given that term in section 2421e of this title.

(3) The term “overseas contingency operation” means a military operation outside the United States and its territories and possessions that is a contingency operation (as that term is defined in section 101(a)(13) of title 10). (Pub. L. 112-239, div. A, title XII, §1273, Jan. 2, 2013, 126 Stat. 2023.)

#### CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 2013, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

#### § 2422. Repealed. Pub. L. 102-88, title VI, § 601, Aug. 14, 1991, 105 Stat. 441

Section, Pub. L. 87-195, pt. III, §662, as added Pub. L. 93-559, §32, Dec. 30, 1974, 88 Stat. 1804, and amended Pub. L. 96-450, title IV, §407(a), Oct. 14, 1980, 94 Stat. 1981, prohibited funding of activities of the Central Intelligence Agency, other than intelligence gathering, without Presidential finding of importance to national security of United States and defined such activities as significant anticipated intelligence activities for purpose of section 413 of Title 50, War and National Defense. See section 3094 of Title 50.

#### § 2423. Exchanges of certain materials

##### (a) Agreement for necessary or strategic raw material; definition

Notwithstanding any other provision of law, whenever the President determines it is in the United States national interest, he shall furnish assistance under this chapter or shall furnish defense articles or services under the Foreign Military Sales Act [22 U.S.C. 2751 et. seq.], pursuant to an agreement with the recipient of such assistance, articles, or services which provides that such recipient may only obtain such assistance, articles, or services in exchange for any necessary or strategic raw material controlled by such recipient. For the purposes of this section, the term “necessary or strategic raw material” includes petroleum, other fossil fuels, metals, minerals, or any other natural substance which the President determines is in short supply in the United States.

##### (b) Allocation of raw materials to Federal agencies

The President shall allocate any necessary or strategic raw material transferred to the United States under this section to any appropriate agency of the United States Government for stockpiling, sale, transfer, disposal, or any other purpose authorized by law.

##### (c) Deposits in United States Treasury of funds from disposal of materials

Funds received from any disposal of materials under subsection (b) shall be deposited as miscellaneous receipts in the United States Treasury.

(Pub. L. 87-195, pt. III, §663, as added Pub. L. 93-559, §32, Dec. 30, 1974, 88 Stat. 1805.)

#### 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.

The Foreign Military Sales Act, referred to in subsec. (a), is Pub. L. 90-629, ch. 1, Oct. 22, 1968, 82 Stat. 1320, as amended, known as the Arms Export Control Act, on authority of section 201(b) of Pub. L. 94-329, title II, June 30, 1976, 90 Stat. 734, and is classified principally to chapter 39 (§2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

#### 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.

#### § 2424. Repealed. Pub. L. 95-88, title I, § 123(c), Aug. 3, 1977, 91 Stat. 541

Section, Pub. L. 87-195, pt. III, §664, as added Pub. L. 93-559, §33, Dec. 30, 1974, 88 Stat. 1805, authorized the President to waive provisions which prohibited assistance to countries trading with designated countries.

#### § 2425. Repealed. Pub. L. 95-424, title VI, § 604, Oct. 6, 1978, 92 Stat. 961

Section, Pub. L. 87-195, pt. III, §665, as added Pub. L. 94-161, title III, §317, Dec. 20, 1975, 89 Stat. 867, authorized appropriations for the interim period July 1, 1976 through Sept. 30, 1976 of such amounts as were necessary to conduct programs for which funding was authorized for fiscal year 1976 by the International Development and Food Assistance Act of 1975 provided the total amount authorized not exceed one-fourth of the total authorized for fiscal year 1976 for such programs and activities.

#### EFFECTIVE DATE OF REPEAL

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

#### § 2426. Discrimination against United States personnel

##### (a) Assignment of personnel on basis of ability and experience

The President shall not take into account, in assigning officers and employees of the United States to carry out any economic development assistance programs funded under this chapter in any foreign country, the race, religion, national origin, or sex of any such officer or employee. Such assignments shall be made solely on the basis of ability and relevant experience.

##### (b) Prohibition on use of funds in country practicing discrimination

Effective six months after December 20, 1975, or on such earlier date as the President may determine, none of the funds made available under this chapter may be used to provide economic development assistance to any country which objects to the presence of any officer or employee of the United States who is present in such country for the purpose of carrying out any program of economic development assistance authorized by the provisions of this chapter on the basis of the race, religion, national origin, or sex of such officer or employee.

##### (c) Rules and regulations

The Secretary of State shall promulgate such rules and regulations as he may deem necessary to carry out the provisions of this section.

(Pub. L. 87-195, pt. III, §666, as added Pub. L. 94-161, title III, §318, Dec. 20, 1975, 89 Stat. 868.)