

**§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment**

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects (as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically prescribes—

(A) procedures to be followed in the formation of contracts;

(B) terms and conditions to be included in contracts;

(C) requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) or a NATO organization may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in such a cooperative project or a NATO organization makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing the Secretary of Defense—

(1) to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 55305 of title 46.

(Added Pub. L. 99-145, title XI, §1102(b)(1), Nov. 8, 1985, 99 Stat. 710, §2407; amended Pub. L. 99-661, div. A, title XI, §1103(b)(1), (2)(A), title XIII, §1343(a)(15), Nov. 14, 1986, 100 Stat. 3963, 3993; renumbered §2350b and amended Pub. L. 101-189, div. A, title IX, §931(b)(1), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 104-106, div. A, title XIII, §1335, div. D, title XLIII, §4321(b)(10), Feb. 10, 1996, 110 Stat. 484, 672; Pub. L. 108-375, div. A, title X, §1084(d)(19), Oct. 28, 2004, 118 Stat. 2062; Pub. L. 109-304, §17(a)(3), Oct. 6, 2006, 120 Stat. 1706.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(1), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

## AMENDMENTS

2006—Subsec. (g)(2). Pub. L. 109-304 substituted “section 55305 of title 46” for “section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))”.

2004—Subsec. (g). Pub. L. 108-375, § 1084(d)(19)(A), inserted “the Secretary of Defense” after “authorizing” in introductory provisions.

Subsec. (g)(1). Pub. L. 108-375, § 1084(d)(19)(B), struck out “the Secretary of Defense” before “to waive”.

1996—Subsec. (c)(1). Pub. L. 104-106, § 4321(b)(10)(A), inserted “prescribes” after “specifically” in introductory provisions and struck out “prescribe” before “procedures” in subpar. (A), before “terms” in subpar. (B), and before “requirements” in subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 104-106, § 4321(b)(10)(B), struck out “to” after “subcontract”.

Subsec. (e)(1). Pub. L. 104-106, § 1335(1), inserted “or a NATO organization” after “United States)”.

Subsec. (e)(2). Pub. L. 104-106, § 1335(2), substituted “such a cooperative project or a NATO organization” for “a cooperative project”.

1989—Pub. L. 101-189 renumbered section 2407 of this title as this section and substituted “Cooperative projects under Arms Export Control Act: acquisition of defense equipment” for “Acquisition of defense equipment under cooperative projects” as section catchline.

1986—Pub. L. 99-661, § 1103(b)(2)(A), struck out “North Atlantic Treaty Organization” before “cooperative projects” in section catchline.

Subsec. (a)(1). Pub. L. 99-661, § 1103(b)(1)(A), struck out “North Atlantic Treaty Organization (NATO)” before “cooperative projects”.

Subsec. (c)(2). Pub. L. 99-661, § 1103(b)(1)(B), struck out “NATO” after “will significantly further”.

Subsec. (e). Pub. L. 99-661, § 1103(b)(1)(C), struck out “NATO” after “will significantly further” in par. (1) and after “United States) in a” in par. (2).

Subsec. (g)(2). Pub. L. 99-661, § 1343(a)(15), substituted “section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))” for “the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))”.

## EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(10) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

**§ 2350c. Cooperative military airlift agreements: allied countries**

(a) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into cooperative military airlift agreements with the government of any allied country for the transportation of the personnel and cargo of the military forces of that country on aircraft operated by or for the military forces of the United States in return for the reciprocal transportation of the personnel and cargo of the military forces of the United States on aircraft operated by or for the military forces of that allied country. Any such agreement shall include the following terms:

(1) The rate of reimbursement for transportation provided shall be the same for each party and shall be not less than the rate charged to military forces of the United States, as determined by the Secretary of Defense under section 2208(h) of this title.

(2) Credits and liabilities accrued as a result of providing or receiving transportation shall be liquidated as agreed upon by the parties.

Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.

(3) During peacetime, the only military airlift capacity that may be used to provide transportation is that capacity that (A) is not needed to meet the transportation requirements of the military forces of the country providing the transportation, and (B) was not created solely to accommodate the requirements of the military forces of the country receiving the transportation.

(4) Defense articles purchased by an allied country from the United States under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or from a commercial source under the export controls of the Arms Export Control Act may not be transported (for the purpose of delivery incident to the purchase of the defense articles) to the purchasing allied country on aircraft operated by or for the military forces of the United States except at a rate of reimbursement that is equal to the full cost of transportation of the defense articles, as required by section 21(a)(3) of the Arms Export Control Act (22 U.S.C. 2761(a)(3)).

(b) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into nonreciprocal military airlift agreements with North Atlantic Treaty Organization subsidiary bodies for the transportation of the personnel and cargo of such subsidiary bodies on aircraft operated by or for the military forces of the United States. Any such agreement shall be subject to such terms as the Secretary of Defense considers appropriate.

(c) Any amount received by the United States as a result of an agreement entered into under this section shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(d) In this section:

(1) The term “allied country” means any of the following:

(A) A country that is a member of the North Atlantic Treaty Organization.

(B) Australia, New Zealand, Japan, and the Republic of Korea.

(C) Any other country designated as an allied country for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term “North Atlantic Treaty Organization subsidiary bodies” has the meaning given to it by section 2350 of this title.

(Added Pub. L. 97-252, title XI, § 1125(a), Sept. 8, 1982, 96 Stat. 757, § 2213; amended Pub. L. 99-145, title XIII, § 1304(b), Nov. 8, 1985, 99 Stat. 742; Pub. L. 100-26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350c and amended Pub. L. 101-189, div. A, title IX, § 931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 102-484, div. A, title XIII, § 1311, Oct. 23, 1992, 106 Stat. 2547; Pub. L. 106-398, § 1 [[div. A], title XII, § 1222], Oct. 30, 2000, 114 Stat. 1654, 1654A-328.)