

foreign country in which the organization is located, except that the term does not include an organization that is primarily an agency or instrumentality of the government of the foreign country.

**(8) Private voluntary organization**

The term “private voluntary organization” means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of title 26) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

**(9) Secretary**

The term “Secretary” means the Secretary of Agriculture, unless otherwise specified in this chapter.

(July 10, 1954, ch. 469, title IV, §402, as added Pub. L. 86-341, title I, §14, Sept. 21, 1959, 73 Stat. 610; amended Pub. L. 87-703, title II, §201(2), Sept. 27, 1962, 76 Stat. 611; Pub. L. 89-808, §2(E), Nov. 11, 1966, 80 Stat. 1536; Pub. L. 92-42, July 1, 1971, 85 Stat. 99; Pub. L. 95-113, title XII, §1205, Sept. 29, 1977, 91 Stat. 956; Pub. L. 96-72, §24, Sept. 29, 1979, 93 Stat. 536; Pub. L. 97-98, title XII, §1213, Dec. 22, 1981, 95 Stat. 1281; Pub. L. 98-623, title IV, §405(b), Nov. 8, 1984, 98 Stat. 3409; Pub. L. 101-624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3645; Pub. L. 104-127, title II, §211(b), Apr. 4, 1996, 110 Stat. 955; Pub. L. 110-246, title III, §3015, June 18, 2008, 122 Stat. 1826.)

AMENDMENTS

2008—Pars. (3) to (9). Pub. L. 110-246 added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively.

1996—Par. (6). Pub. L. 104-127 added par. (6) and struck out heading and text of former par. (6). Prior to amendment, text read as follows: “The term ‘indigenous nongovernmental organization’ means an organization that operates under the laws of the recipient country, or that has its principal place of activity in such country, and that works at the local level to solve development problems in the foreign country in which it is located, except that the term does not include an organization that is primarily an agent or instrumentality of the foreign government.”

1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions defining agricultural commodity.

1984—Pub. L. 98-623 inserted “(including fish, without regard to whether such fish are harvested in aquacultural operations)” and struck out provision that subject to the availability of appropriations therefor, any domestically produced fishery product could be made available under this chapter.

1981—Pub. L. 97-98 substituted “wine, beer, distilled spirits, or other alcoholic beverage” for “wine or beer”.

1979—Pub. L. 96-72 inserted reference to beer.

1977—Pub. L. 95-113 required that in allocation of funds made available under subchapter II of this chapter priority be given to financing the sale of food and fiber commodities.

1971—Pub. L. 92-42 inserted sentence that proviso excluding alcoholic beverages from term “agricultural commodity” shall not be construed as prohibiting domestic wine industry from participating in market development activities for expansion of export sales of domestic agricultural commodities.

1966—Pub. L. 89-808 substituted definition of agricultural commodity and provisions as to availability of fishery products for former provisions respecting agreements for delivery of surplus agricultural commodities, period, and security for payments in relation to long-term supply contracts, now covered by subchapter II of this chapter. See section 1707 of this title.

1962—Pub. L. 87-703 authorized executive agreements with financial institutions acting in behalf of friendly nations and administrative sales agreements with foreign and United States private trade with provision for security for payments.

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 1984 AMENDMENT

Amendment by Pub. L. 98-623 to be considered as having taken effect before Sept. 8, 1982, for purposes of section 135 of Pub. L. 97-253 (set out as a note under section 612c of this title), see section 405(d) of Pub. L. 98-623, set out as a note under section 1707a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-808 effective Jan. 1, 1967, see section 5 of Pub. L. 89-808, set out as a note under section 1691 of this title.

**§ 1733. General provisions**

**(a) Prohibition**

No agricultural commodity shall be made available under this chapter unless it is determined that—

(1) adequate storage facilities will be available in the recipient country at the time of the arrival of the commodity to prevent the spoilage or waste of the commodity; and

(2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country.

**(b) Impact on local farmers and economy**

The Secretary or the Administrator, as appropriate, shall ensure that the importation of United States agricultural commodities and the use of local currencies for development purposes will not have a disruptive impact on the farmers or the local economy of the recipient country. The Secretary or the Administrator, as appropriate, shall seek information, as part of the regular proposal and submission process, from implementing agencies on the potential costs and benefits to the local economy of sales of agricultural commodities within the recipient country.

**(c) Transshipment**

The Secretary or the Administrator, as appropriate, shall, under such terms and conditions as are determined to be appropriate, require commitments designed to prevent or restrict the resale or transshipment to other countries, or use for other than domestic purposes, of agricultural commodities donated or purchased under this chapter.

**(d) Private trade channels and small business**

Private trade channels shall be used under this chapter to the maximum extent practicable in the United States and in the recipient countries with respect to—

- (1) sales from privately owned stocks;
- (2) sales from stocks owned by the Commodity Credit Corporation; and
- (3) donations.

Small businesses shall be provided adequate and fair opportunity to participate in such sales.

**(e) World prices****(1) In general**

In carrying out this chapter, reasonable precautions shall be taken to assure that sales or donations of agricultural commodities will not unduly disrupt world prices for agricultural commodities or normal patterns of commercial trade with foreign countries.

**(2) Sale price**

Sales of agricultural commodities described in paragraph (1) shall be made at a reasonable market price in the economy where the agricultural commodity is to be sold, as determined by the Secretary or the Administrator, as appropriate.

**(f) Publicity**

Commitments shall be obtained from countries or private entities, as appropriate, receiving commodities under this chapter that such countries or private entities will widely publicize, to the extent practicable, through the use of the public media and through other means, that such commodities are being provided through the friendship of the American people as food for peace.

**(g) Participation of private sector**

The Secretary or the Administrator, as appropriate, shall encourage the private sector of the United States and private importers in developing countries to participate in the programs established under this chapter.

**(h) Safeguard usual marketings**

In carrying out this chapter, reasonable precautions shall be taken to safeguard the usual marketings of the United States and to avoid displacing any sales of the United States agricultural commodities that the Secretary or Administrator determines would otherwise be made.

**(i) Military distribution of food aid****(1) In general**

The Secretary or the Administrator, as appropriate, shall attempt to ensure that agricultural commodities made available under this chapter will be provided without regard to

the political affiliation, geographic location, ethnic, tribal, or religious identity of the recipient or without regard to other extraneous factors.

**(2) Prohibition on handling of commodities by the military****(A) In general**

Except as provided in subparagraph (B), the Secretary or the Administrator, as appropriate, shall not enter into an agreement under this chapter to provide agricultural commodities if such agreement requires or permits the distribution, handling, or allocation of such commodities by the military forces of any government or insurgent group.

**(B) Exception**

Notwithstanding subparagraph (A), the Secretary or the Administrator, as appropriate, may authorize the handling or distribution of commodities by the military forces of a country in exceptional circumstances in which—

- (i) nonmilitary channels are not available for such handling or distribution;
- (ii) such action is consistent with the requirements of paragraph (1); and
- (iii) the Secretary or the Administrator, as appropriate, determines that such action is necessary to meet the emergency health, safety, or nutritional requirements of the recipient population.

**(3) Encouragement of safe passage**

When entering into agreements under this chapter that involve areas within recipient countries that are experiencing protracted warfare or civil strife, the Secretary or the Administrator, as appropriate, shall, to the extent practicable, encourage all parties to the conflict to permit safe passage of the commodities and other relief supplies and to establish safe zones for medical and humanitarian treatment and evacuation of injured persons.

**(j) Violations of human rights****(1) Ineligible countries**

The Secretary or the Administrator, as appropriate, shall not enter into any agreement under this chapter to provide agricultural commodities, or to finance the sale of agricultural commodities, to the government of any country determined by the President to engage in a consistent pattern of gross violations of internationally recognized human rights, including—

- (A) the torture or cruel, inhuman, or degrading treatment or punishment of individuals;
- (B) the prolonged detention of individuals without charges;
- (C) the responsibility for causing the disappearance of individuals through the abduction and clandestine detention of such individuals; or
- (D) other flagrant denials of the right to life, liberty, and the security of persons.

**(2) Waiver**

Paragraph (1) shall not prohibit the provision of assistance to such a country if the as-

sistance is targeted to the most needy people in such country and is made available in such country through channels other than the government.

**(k) Abortion prohibition**

Local currencies that are made available for use under this chapter may not be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

**(l) Sale procedure**

**(1) In general**

Subsections (b) and (h) shall apply to sales of commodities in recipient countries to generate proceeds to carry out projects under—

- (A) subchapters II and III;
- (B) section 1431(b) of this title; and
- (C) the Food for Progress Act of 1985 (7 U.S.C. 1736o).

**(2) Currency**

A sale described in paragraph (1) may be made in United States dollars or other currencies.

**(m) Report on use of funds**

**(1) Report required**

Not later than 180 days after February 7, 2014, and annually thereafter, the Administrator shall submit to Congress a report that—

- (A) specifies the amount of funds (including funds for administrative costs, indirect cost recovery, internal transportation, storage, and handling, and associated distribution costs) provided to each eligible organization that received assistance under this chapter in the previous fiscal year;
- (B) describes how those funds were used by the eligible organization;
- (C) describes the actual rate of return for each commodity made available under this chapter, including—
  - (i) factors that influenced the rate of return; and
  - (ii) for the commodity, the costs of bagging or further processing, ocean transportation, inland transportation in the recipient country, storage costs, and any other information that the Administrator determines to be necessary; and
- (D) for each instance in which a commodity was made available under this chapter at a rate of return less than 70 percent, describes the reasons for the rate of return realized.

**(2) Rate of return described**

For purposes of applying paragraph (1)(C), the rate of return for a commodity shall be equal to the proportion that—

- (A) the proceeds the implementing partners generate through monetization; bears to
- (B) the cost to the Federal Government to procure and ship the commodity to a recipient country for monetization.

(July 10, 1954, ch. 469, title IV, §403, as added Pub. L. 86-341, title I, §14, Sept. 21, 1959, 73 Stat. 610; amended Pub. L. 87-703, title II, §201(3),

Sept. 27, 1962, 76 Stat. 611; Pub. L. 88-638, §1(17), Oct. 8, 1964, 78 Stat. 1037; Pub. L. 89-808, §2(E), Nov. 11, 1966, 80 Stat. 1536; Pub. L. 95-113, title XII, §1206, Sept. 29, 1977, 91 Stat. 956; Pub. L. 96-533, title IV, §407, Dec. 16, 1980, 94 Stat. 3151; Pub. L. 97-98, title XII, §1214, Dec. 22, 1981, 95 Stat. 1282; Pub. L. 101-624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3646; Pub. L. 102-237, title III, §321, Dec. 13, 1991, 105 Stat. 1857; Pub. L. 104-127, title II, §213, Apr. 4, 1996, 110 Stat. 956; Pub. L. 107-171, title III, §3009(a), May 13, 2002, 116 Stat. 283; Pub. L. 113-79, title III, §3008, Feb. 7, 2014, 128 Stat. 775.)

REFERENCES IN TEXT

The Food for Progress Act of 1985, referred to in subsec. (l)(1)(C), is Pub. L. 99-198, title XI, §1110, Dec. 23, 1985, 99 Stat. 1472, as amended, which is classified to section 1736o of this title.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-79, §3008(a), inserted at end “The Secretary or the Administrator, as appropriate, shall seek information, as part of the regular proposal and submission process, from implementing agencies on the potential costs and benefits to the local economy of sales of agricultural commodities within the recipient country.”

Subsec. (m). Pub. L. 113-79, §3008(b), added subsec. (m).

2002—Subsec. (e). Pub. L. 107-171, §3009(a)(1), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (l). Pub. L. 107-171, §3009(a)(2), added subsec. (l).

1996—Subsec. (b). Pub. L. 104-127, §213(1), inserted heading and struck out former heading “Consultations” and in text struck out “consult with representatives from the International Monetary Fund, the International Bank for Reconstruction and Development, the World Bank, and other donor organizations to” before “ensure that”.

Subsec. (c). Pub. L. 104-127, §213(2), struck out “from countries” after “require commitments” and substituted “or use for other” for “for use for other”.

Subsec. (f). Pub. L. 104-127, §213(3), inserted “or private entities, as appropriate,” after “from countries” and “or private entities” after “such countries”.

Subsec. (i)(2)(C). Pub. L. 104-127, §213(4), struck out heading and text of subpar. (C). Text read as follows: “Not later than 30 days after an authorization is provided under subparagraph (B), the Secretary or the Administrator, as appropriate, shall prepare and submit to the appropriate committees of Congress a report concerning such authorization and include in any such report the reason for the authorization, including an explanation of why no alternatives to such handling or distribution were available.”

1991—Subsec. (i)(2)(C). Pub. L. 102-237 substituted “committees” for “Committees”.

1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions authorizing appropriations necessary for this chapter, classifying such expenditures under international affairs and finance rather than agriculture, valuing commodity, for purpose of reimbursing Commodity Credit Corporation, at price not greater than export market price at time commodity was made available, and authorizing President to transfer up to 15 percent of funding for any fiscal year from any subchapter of this chapter to any other subchapter.

1981—Subsec. (b). Pub. L. 97-98 inserted “a price not greater than”.

1980—Subsec. (c). Pub. L. 96-533 added subsec. (c).

1977—Pub. L. 95-113 designated existing provisions as subsec. (a) and added subsec. (b).

1966—Pub. L. 89-808 substituted provisions for authorization of appropriations, including reimbursement of

Commodity Credit Corporation, and classification of expenditures, formerly covered in former section 1703(a) of this title, for provision for payment for commodities, now provided for by section 1706(a) of this title.

1964—Pub. L. 88-638 substituted “less than the minimum rate required by section 2161 of Title 22 for loans made under that section” for “more than the cost of the funds to the United States Treasury as determined by the Secretary of the Treasury, taking into consideration the current average market yields on outstanding marketable obligations of the United States having maturity comparable to the maturities of loans made by the President under this section”.

1962—Pub. L. 87-703 substituted “reasonable” for “approximately equal” annual amounts and provided for deferral of date for beginning annual payment.

#### 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 1981 AMENDMENT

Amendment by Pub. L. 97-98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97-98, set out as an Effective Date note under section 4301 of this title.

#### EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as a note under section 1307 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-808 effective Jan. 1, 1967, see section 5 of Pub. L. 89-808, set out as a note under section 1691 of this title.

#### DELEGATION OF FUNCTIONS

Functions of President under subsec. (j) of this section delegated to Secretary of State by section 4(b) of Ex. Ord. No. 12752, Feb. 25, 1991, 56 F.R. 8256, set out as a note under section 1691 of this title.

### § 1734. Agreements

#### (a) In general

Before entering into agreements with foreign countries under subchapters II and III-A for the provision of commodities, the Secretary or the Administrator, as appropriate, shall consider the extent to which the recipient country is undertaking measures for economic development purposes in order to improve food security and agricultural development, alleviate poverty, and promote broad-based, equitable, and sustainable development.

#### (b) Terms of agreement

An agreement entered into under this chapter shall—

(1) include an estimate of the annual value or volume of agricultural commodities proposed to be made available to the country or eligible organization under the agreement;

(2) with respect to agreements entered into with foreign countries under subchapters II and III-A, include a statement of the manner in which the agricultural commodities provided under the agreement or the revenues generated by the sale of such commodities (if such commodities are sold), will be integrated into the overall development plans of the country to improve food security and agricultural development, alleviate poverty, and pro-

mote broad-based, equitable, and sustainable agriculture and broad-based economic growth;

(3) with respect to agreements entered into under subchapters II and III-A, include a statement of the manner in which competitive private sector participation within the recipient country in the storage, marketing, transportation, and distribution of agricultural commodities made available under this chapter will be encouraged;

(4) include a statement that such agreement shall be subject to the availability, during each fiscal year to which the agreement applies, of the necessary appropriations and agricultural commodities; and

(5) contain such other terms and conditions as the Secretary or the Administrator, as appropriate, determines to be necessary.

#### (c) Multi-year agreements

##### (1) In general

Agreements to provide assistance on a multi-year basis to recipient countries or to eligible organizations—

(A) may be made available under subchapters II and III-A; and

(B) shall be made available under subchapter III.

##### (2) Exception

The Secretary or the Administrator, as appropriate, may determine not to make assistance available on a multi-year basis with respect to a recipient country or an eligible organization if it is determined that assistance should be provided to such country or through such organization only on an annual basis because—

(A) the past performance of the country or organization in meeting program objectives does not warrant a multi-year agreement;

(B) it is anticipated that the need of the country or organization for food aid does not extend beyond 1 year; or

(C) other circumstances, as determined by the Secretary or the Administrator, as appropriate, indicate there is only a need for a 1 year agreement.

#### (d) Review of agreements

The Secretary or the Administrator, as appropriate, may make a determination to terminate, or refuse to enter into, a multi-year agreement with respect to a recipient country if the Secretary or the Administrator determines that such country is not fulfilling the objectives or requirements of this chapter. In making such a determination, the Secretary or the Administrator, as appropriate, may consider the extent to which the country is—

(1) making significant economic development reforms;

(2) promoting free and open markets for food and agricultural producers; and

(3) fostering increased food security.

(July 10, 1954, ch. 469, title IV, §404, as added Pub. L. 86-341, title I, §14, Sept. 21, 1959, 73 Stat. 610; amended Pub. L. 89-808, §2(E), Nov. 11, 1966, 80 Stat. 1536; Pub. L. 96-53, title II, §209, Aug. 14, 1979, 93 Stat. 370; Pub. L. 101-624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3648; Pub. L. 104-127, title II, §214, Apr. 4, 1996, 110 Stat. 956.)