

tion of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) NOTIFICATION OF CONGRESS.—(1) The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but, except as provided in paragraph (2), shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(2) A notification is not required under paragraph (1) if the end item being acquired in a higher quantity is an end item under a tactical missile program or a munitions program.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text included in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term “end item” means a production product assembled, completed, and ready for issue or deployment.

(B) The term “head of an agency” means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107-314, div. A, title VIII, §801(a)(1), Dec. 2, 2002, 116 Stat. 2600; amended Pub. L. 108-136, div. A, title X, §1043(b)(11), Nov. 24, 2003, 117 Stat. 1611; Pub. L. 114-328, div. A, title VIII, §852, Dec. 23, 2016, 130 Stat. 2296.)

PRIOR PROVISIONS

A prior section 2308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102-484, div. A, title VIII, §820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103-35, title II, §201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103-160, div. A, title IX, §904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities, prior to repeal by Pub. L. 103-355, title I, §1503(b)(1), title X, §10001, Oct. 13, 1994, 108 Stat. 3297, 3404, effective Oct. 13, 1994, except as otherwise provided.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 designated existing provisions as par. (1), inserted “, except as provided in paragraph (2),” after “but”, and added par. (2).

2003—Subsec. (e)(2). Pub. L. 108-136 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: “The term ‘congressional defense committees’ means—

“(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

“(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

TIME FOR ISSUANCE OF FINAL REGULATIONS

Pub. L. 107-314, div. A, title VIII, §801(b), Dec. 2, 2002, 116 Stat. 2602, provided that: “The Secretary of Defense shall issue the final regulations under section 2308(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].”

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 97-258, §2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, §10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words “an agency named in section 2303 of this title” are substituted for the words “any such agency”.

In subsection (b), the words “an allotment under subsection (a)” are substituted for the words “such allotments”.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97-258 substituted “disbursing official” for “disbursing officer”.

§ 2310. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.