

title. For complete classification of this Act to the Code, see Short Title note set out under section 5951 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(11). Pub. L. 104-114, §106(b), substituted “military and intelligence facilities, including the military and intelligence facilities at Lourdes and Cienfuegos” for “of military facilities”.

Subsec. (b)(5), (6). Pub. L. 104-114, §106(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(4). Pub. L. 104-114, §106(c)(3), added par. (4).

Subsec. (d). Pub. L. 104-114, §106(d)(2), added subsec. (d).

1994—Subsec. (b)(4). Pub. L. 103-236 substituted “section 2799aa or 2799aa-1” for “section 2429 or 2429a”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-236, set out as an Effective Date note under section 6301 of this title.

TRANSFER OF FUNCTIONS

United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State, see sections 6531 and 6532 of this title.

INELIGIBILITY FOR ASSISTANCE OF INSTITUTIONS WITHHOLDING CERTAIN DOCUMENTS OF UNITED STATES NATIONALS

Pub. L. 102-511, title II, §202, Oct. 24, 1992, 106 Stat. 3331, provided that:

“(a) PROHIBITION.—Except as provided in subsections (b) and (c), an agency, instrumentality, or other governmental entity of an independent state of the former Soviet Union shall not be eligible to receive assistance under chapter 11 of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2295 et seq.] if—

“(1) on the date of enactment of this Act [Oct. 24, 1992], there is outstanding a final judgment by a court of competent jurisdiction in that independent state that that governmental entity is withholding unlawfully books or other documents of religious or historical significance that are the property of United States persons; and

“(2) within 90 days of a request by such United States persons, the Secretary of State determines that execution of the court’s judgment is blocked as the result of extrajudicial causes such as any of the following:

“(A) A declared refusal of the defendant to comply.

“(B) The unwillingness or failure of local authorities to enforce compliance.

“(C) The issuance of an administrative decree nullifying a court’s judgment or forbidding compliance.

“(D) The passage of legislation, after a court’s judgment, nullifying that judgment or forbidding compliance with that judgment.

“(b) EXCEPTION FOR HUMANITARIAN ASSISTANCE.—The prohibition contained in subsection (a) shall not apply to the provision of assistance to alleviate suffering resulting from a natural or man-made disaster.

“(c) WAIVER AUTHORITY.—The Secretary of State may waive the application of subsection (a) whenever the Secretary finds that—

“(1) the court’s judgment has been executed; or

“(2) it is important to the national interest of the United States to do so.

“(d) REPORT.—Nine months after the date of enactment of this Act [Oct. 24, 1992], the Secretary of State shall report to the Speaker of the House of Representa-

tives and the Chairman of the Committee on Foreign Relations of the Senate on the status of final judgments described in subsection (a)(1).

“(e) UNITED STATES PERSON.—For purposes of this section, the term ‘United States person’ means—

“(1) any citizen, national, or permanent resident alien of the United States; and

“(2) any corporation, partnership, or other juridical entity which is 50 percent or more beneficially owned by individuals described in paragraph (1).”

Executive Documents

CHANGE OF NAME

The Conference on Security and Cooperation in Europe to be called the Organization for Security and Cooperation in Europe effective Jan. 1, 1995, pursuant to Ex. Ord. No. 13029, Dec. 3, 1996, 61 F.R. 64591.

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.

Functions of President under subsections (a) and (c)(2) of this section delegated to Coordinator by section 2(c), (d) of Ex. Ord. No. 12884, Dec. 1, 1993, 58 F.R. 64099, set out as a note under section 5812 of this title.

Functions of President under subsections (b)(1)–(3), (5), and (c)(1) of this section delegated to Secretary of State by section 1(2), (3) of Ex. Ord. No. 12884.

Functions of President under subsec. (c)(3) of this section and requirement to make reports under this section regarding determinations under subsec. (c)(3) delegated to Secretary of State by section 3(c) of Ex. Ord. No. 12884, Dec. 1, 1993, 58 F.R. 64099, as amended.

§ 2295b. Authorities relating to assistance and other provisions

(a) Assistance through governments and non-governmental organizations

Assistance under this part may be provided to governments or through nongovernmental organizations.

(b) Technical and managerial assistance

Technical assistance under this part shall, to the maximum extent feasible, be provided on a long term, on-site basis and shall emphasize the provision of practical, management and other problem-solving advice, particularly advice on private enterprise provided by United States business volunteers.

(c) Enterprise funds

Activities supported pursuant to this part may include the establishment of and the provision of support for one or more enterprise funds for the independent states of the former Soviet Union. If the President determines that an enterprise fund should be established and supported under this part, the provisions contained in section 201 of the Support for East European Democracy (SEED) Act of 1989 [22 U.S.C. 5421] (excluding the authorizations of appropriations provided in subsection (b) of that section) shall be deemed to apply with respect to such enterprise fund and to funds made available to such enterprise fund pursuant to this part.

(d) Cooperative development and research projects

Assistance under this part may include support for cooperative development projects, including cooperative development research

projects, among the United States, other countries, and independent states of the former Soviet Union.

(e) Administration of justice programs

In order to strengthen the administration of justice in the independent states of the former Soviet Union under paragraph (2)(J) of section 2295 of this title, the President may exercise the same authorities as are available under section 2346c of this title, subject to the limitations and requirements of that section, other than subsection (c) and the last two sentences of subsection (e).

(f) Use of economic support funds

Any funds that have been allocated under part 4 of subchapter II of this chapter for assistance for the independent states of the former Soviet Union may be used in accordance with the provisions of this part.

(g) Use of SEED agency funds and administrative authorities

The President may authorize any agency of the United States Government that has authority to conduct activities under the Support for East European Democracy (SEED) Act of 1989 [22 U.S.C. 5401 et seq.] to use—

- (1) any funds that are available to it for activities related to international affairs outside Eastern Europe, and
- (2) any administrative authorities that are available to it for activities with respect to Eastern Europe,

to conduct activities authorized by section 2295 of this title with respect to the independent states of the former Soviet Union.

(h) Procurement restrictions

Funds made available for assistance under this part may be used for procurement—

- (1) in the United States, the independent states of the former Soviet Union, or a developing country; or
- (2) in any other country but only if—
 - (A) the provision of such assistance requires commodities or services of a type that are not produced in and available for purchase in any country specified in paragraph (1); or
 - (B) the President determines, on a case-by-case basis, that procurement in such other country is necessary—
 - (i) to meet unforeseen¹ circumstances, such as emergency situations, where it is important to permit procurement in a country not specified in paragraph (1), or
 - (ii) to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(i) Terms and conditions

Assistance under this part shall be provided on such terms and conditions as the President may determine, consistent with applicable provisions of law (except as otherwise provided in subsection (j)).

¹ So in original. Probably should be “unforeseen”.

(j) Waiver of certain provisions

(1) In general

Funds authorized to be appropriated for fiscal year 1993 by this part, and any other funds appropriated for fiscal year 1993 that are used under the authority of subsection (f) or (g), may be used to provide assistance under this part notwithstanding any other provision of law, except for—

(A) this part;

(B) section 2394-1 of this title and comparable notification requirements contained in sections of the annual foreign operations, export financing, and related programs Act;

(C) sections 2799aa and 2799aa-1 of this title and sections 5604 and 5605 of this title, to the extent that they apply to assistance to governments; and

(D) section 1341 of title 31 (commonly referred to as the “Anti-Deficiency Act”), the Congressional Budget and Impoundment Control Act of 1974, the Balanced Budget and Emergency Deficit Control Act of 1985, and the Budget Enforcement Act of 1990.

(2) Nuclear reactor safety and related activities

Any provision that corresponds to section 510 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (relating to the prohibition on financing exports of nuclear equipment, fuel, and technology) shall not apply with respect to funds used pursuant to this part.

(k) Definitions

(1) Appropriate congressional committees

As used in this part, the term “appropriate congressional committees” means the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(2) Independent states of the former Soviet Union

As used in this part, the terms “independent states of the former Soviet Union” and “independent states” have the meaning given those terms by section 5801 of this title.

(3) Nonmarket based trade

As used in section 2295a(b)(5) of this title, the term “nonmarket based trade” includes exports, imports, exchanges, or other arrangements that are provided for goods and services (including oil and other petroleum products) on terms more favorable than those generally available in applicable markets or for comparable commodities, including—

(A) exports to the Cuban Government on terms that involve a grant, concessional price, guaranty, insurance, or subsidy;

(B) imports from the Cuban Government at preferential tariff rates;

(C) exchange arrangements that include advance delivery of commodities, arrangements in which the Cuban Government is not held accountable for unfulfilled exchange contracts, and arrangements under

which Cuba does not pay appropriate transportation, insurance, or finance costs; and

(D) the exchange, reduction, or forgiveness of debt of the Cuban Government in return for a grant by the Cuban Government of an equity interest in a property, investment, or operation of the Cuban Government or of a Cuban national.

(4) Cuban Government

(A) The term “Cuban Government” includes the government of any political subdivision of Cuba, and any agency or instrumentality of the Government of Cuba.

(B) For purposes of subparagraph (A), the term “agency or instrumentality of the Government of Cuba” means an agency or instrumentality of a foreign state as defined in section 1603(b) of title 28, with each reference in such section to “a foreign state” deemed to be a reference to “Cuba”.

(Pub. L. 87-195, pt. I, §498B, as added Pub. L. 102-511, title II, §201, Oct. 24, 1992, 106 Stat. 3328; amended Pub. L. 103-236, title VIII, §826(c), Apr. 30, 1994, 108 Stat. 519; Pub. L. 104-114, title I, §106(c)(2), Mar. 12, 1996, 110 Stat. 796; Pub. L. 107-246, §4(b), Oct. 23, 2002, 116 Stat. 1515.)

Editorial Notes

REFERENCES IN TEXT

The Support for East European Democracy (SEED) Act of 1989, referred to in subsec. (g), is Pub. L. 101-179, Nov. 28, 1989, 103 Stat. 1298, as amended, 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 Congressional Budget and Impoundment Control Act of 1974, referred to in subsec. (j)(1)(D), is Pub. L. 93-344, July 12, 1974, 88 Stat. 297, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2, The Congress, and Tables.

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (j)(1)(D), is title II of Pub. L. 99-177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§900 et seq.) and sections 654 to 656 of Title 2, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106 and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The Budget Enforcement Act of 1990, referred to in subsec. (j)(1)(D), is title XIII of Pub. L. 101-508, Nov. 5, 1990, 104 Stat. 1388-573. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 900 of Title 2 and Tables.

Section 510 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, referred to in subsec. (j)(2), is section 510 of Pub. L. 101-513, title V, Nov. 5, 1990, 104 Stat. 2003, which is not classified to the Code.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-246 substituted “paragraph (2)(J)” for “paragraph (2)(G)”.

1996—Subsec. (k)(3), (4). Pub. L. 104-114 added pars. (3) and (4).

1994—Subsec. (j)(1)(C). Pub. L. 103-236 substituted “sections 2799aa and 2799aa-1” for “sections 2429 and 2429a”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-236 effective 60 days after Apr. 30, 1994, see section 831 of Pub. L. 103-236, set out as an Effective Date note under section 6301 of this title.

TRANS-CAUCASUS ENTERPRISE FUND

Pub. L. 104-107, title II, [(t)], Feb. 12, 1996, 110 Stat. 714, provided that: “The President shall establish a Trans-Caucasus Enterprise Fund to encourage regional peace through economic cooperation: *Provided*, That the President shall seek other bilateral and multilateral investors in the Fund: *Provided further*, That of the funds made available under this heading [OTHER BILATERAL ECONOMIC ASSISTANCE, ASSISTANCE FOR THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION, see 110 Stat. 712], not less than \$15,000,000 shall be made available for a United States investment in the Trans-Caucasus Enterprise Fund.”

Executive Documents

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.

Functions of President under subsecs. (c) and (g) of this section delegated to Coordinator by section 2(c) of Ex. Ord. No. 12884, Dec. 1, 1993, 58 F.R. 64099, set out as a note under section 5812 of this title.

Functions of President under subsecs. (h) and (i) of this section delegated by section 5(a) of Ex. Ord. No. 12884 to head of agency responsible for administering the particular program or activity with respect to which the authority is to be exercised.

§ 2295c. Authorization of appropriations

(a) In general

To carry out this part, there are authorized to be appropriated to the President for fiscal year 1993 \$410,000,000, in addition to amounts otherwise available for assistance for the independent states of the former Soviet Union. Amounts appropriated pursuant to this subsection are authorized to remain available until expended.

(b) Operating expenses

(1) Authority to transfer program funds

Subject to paragraph (2), funds made available under subsection (a) may be transferred to, and merged with, funds appropriated for “Operating Expenses of the Agency for International Development”. Funds so transferred may be expended for administrative costs in carrying out this part, including reimbursement of the Department of State for its incremental costs associated with assistance provided under this part.

(2) Limitation on amount transferred

Not more than 2 percent of the funds made available for a fiscal year under subsection (a) may be transferred pursuant to paragraph (1) unless, at least 15 days before transferring any additional amount, the President notifies the appropriate congressional committees in accordance with the procedures applicable to reprogramming notifications under section 2394-1 of this title.

(Pub. L. 87-195, pt. I, §498C, as added Pub. L. 102-511, title II, §201, Oct. 24, 1992, 106 Stat. 3330.)