

Mar. 20, 1986, 100 Stat. 49; Pub. L. 101-624, title XV, § 1572(2), Nov. 28, 1990, 104 Stat. 3702.)

### Editorial Notes

#### REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (d), is set out in section 5314 of Title 5, Government Organization and Employees.

#### CODIFICATION

Section was enacted as part of the Food Security Act of 1985, and not as part of the Food for Peace Act which comprises this chapter.

Another section 1113(d) of Pub. L. 99-198 amended section 5312 of Title 5, Government Organization and Employees.

#### AMENDMENTS

1990—Subsec. (c)(9)(B), (C). Pub. L. 101-624 redesignated subpar. (C) as (B) and struck out former subpar. (B) which required that report contain identification of at least 15 target countries most likely to emerge as growth markets for commodities in next 5 to 10 years.

1986—Pub. L. 99-260, § 4(a)(1)(A), substituted “Food Assistance” for “Food Aid” in section catchline.

Subsec. (a). Pub. L. 99-260, § 4(a)(1)(B), (b), substituted “Food Assistance” for “Food Aid” and inserted provision that the President appoint the initial Special Assistant not later than May 1, 1986.

Subsec. (d). Pub. L. 99-260, § 4(d), amended subsec. (d) generally, substituting provision relating to compensation of the Special Assistant for provision relating to additional required functions of the Special Assistant.

### § 1736a. Administrative provisions

#### (a) Subchapter II programs

##### (1) Acquisitions

The importing country or private entity that enters into an agreement under subchapter II shall acquire the agricultural commodities to be financed under subchapter II.

##### (2) Invitation for bid

No purchase of agricultural commodities from private stock or purchase of ocean transportation shall be financed under subchapter II unless such purchases are made on the basis of an invitation for bid that is publicly advertised in the United States, and on the basis of bid offerings that shall conform to such invitation and be received and publicly opened in the United States. All awards in the purchase of commodities or ocean transportation financed under subchapter II shall be consistent with open, competitive, and responsive bid procedures, as determined appropriate by the Secretary. Resulting contracts may contain such terms and conditions as the Secretary determines are necessary and appropriate.

#### (b) Agents

##### (1) Authority of Secretary or Commodity Credit Corporation

###### (A) General rule

Except as provided in subparagraph (B), if it is determined appropriate, the Secretary or the Commodity Credit Corporation may serve as the purchasing or shipping agent, or both, for the importer or importing country in arranging the purchase or shipping of commodities financed under subchapter II.

###### (B) Exception

Notwithstanding subparagraph (A), the Secretary or the Commodity Credit Corpora-

tion may award, under a competitive bidding process, contracts for establishing freight agents who shall act on behalf of the Secretary or the Corporation to handle the shipping of commodities financed under this chapter.

##### (C) Avoidance of conflict of interest of contractors

Freight agents employed by the Secretary or the Commodity Credit Corporation under subchapter II shall not represent any foreign government during the period of their contract with the United States Government.

#### (2) Reasonable fees and commissions

##### (A) Fees

Notwithstanding any other provision of law, the Secretary or the Commodity Credit Corporation may enter into an agreement with the importer or importing country that contains the terms and conditions that will govern the provision of purchasing or shipping agent services by the Secretary or the Corporation, including the establishment of fees for such services. Any such fees shall be fair and reasonable in relation to the services performed and shall be available as reimbursement for costs incurred in providing such services.

##### (B) Prohibition on commissions

Commissions, fees, or other payments to any selling agent or to any agent of a purchaser shall be prohibited in the purchase of agricultural commodities that are financed under subchapter II of this chapter.

#### (3) Limitations

No commission, fees, or other payments to an agent, broker, consultant, or other representative of the importer or importing country for ocean transportation brokerage services in connection with the carriage of commodities provided under subchapter II of this chapter may—

(A) be paid in excess of an amount determined appropriate by the Secretary; and

(B) be shared by such person with the importer or importing country or any agent thereof.

#### (4) Avoidance of conflict of interest

A person may not be an agent, broker, consultant, or other representative of the United States Government, an importer, or an importing country in connection with agricultural commodities provided under this chapter during a fiscal year in which such person provides or acts as an agent, broker, consultant, or other representative of a person engaged in providing ocean transportation or transportation-related services for such commodities. For the purpose of this paragraph, the term “transportation-related services” means lightening, stevedoring, bagging, or inland transportation to the destination point.

#### (c) Subchapters III and III-A program

##### (1) Acquisition

###### (A) In general

The Administrator shall transfer, arrange for the transportation, and take other steps

necessary to make available agricultural commodities to be provided under subchapter III and subchapter III-A.

**(B) Certain commodities made available for nonemergency assistance**

In the case of agricultural commodities made available for nonemergency assistance under subchapter III for least developed countries that meet the poverty and other eligibility criteria established by the International Bank for Reconstruction and Development for financing under the International Development Association, the Administrator may pay the transportation costs incurred in moving the agricultural commodities from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs.

**(2) Freight procurement**

Notwithstanding chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41 or other similar provisions of law relating to the making or performance of Federal Government contracts, ocean transportation under subchapters III and III-A may be procured on the basis of full and open competitive procedures. Resulting contracts may contain such terms and conditions as the Administrator determines are necessary and appropriate.

**(3) Avoidance of conflict of interest**

Freight agents employed by the Agency for International Development under subchapters III and III-A shall not represent any foreign government during the period of their contract with the United States Government.

**(4) Prepositioning**

**(A) In general**

Funds made available for fiscal years 2001 through 2023 to carry out subchapters III and III-A may be used by the Administrator to procure, transport, and store agricultural commodities for prepositioning within the United States and in foreign countries, except that for each of fiscal years 2001 through 2013 not more than \$10,000,000 of such funds and for each of fiscal years 2014 through 2023 not more than \$15,000,000 of such funds may be used to store agricultural commodities for prepositioning in foreign countries.

**(B) Additional prepositioning sites**

The Administrator may establish additional sites for prepositioning in foreign countries or change the location of current sites for prepositioning in foreign countries after conducting, and based on the results of, assessments of need, the availability of appropriate technology for long-term storage, feasibility, and cost.

**(5) Nonemergency or multiyear agreements**

Annual resource requests for ongoing non-emergency or ongoing multiyear agreements under subchapter III shall be finalized not later than October 1 of the fiscal year in which

the agricultural commodities will be shipped under the agreement.

**(d) Timing of shipments**

In determining the timing of the shipment of agricultural commodities to be provided under this chapter, the Secretary or the Administrator, as appropriate, shall consider—

- (1) the time of harvest of any competing commodities in the recipient country; and
- (2) such other concerns determined to be appropriate.

**(e) Deadline for agreements under subchapters II and III-A**

An agreement under subchapters II and III-A shall, to the extent practicable, be entered into not later than—

- (1) November 30 of the first fiscal year in which agricultural commodities are to be shipped under the agreement; or
- (2) 60 days after the date of enactment of the annual Rural Development, Agriculture, and Related Agencies Appropriations Act for the first fiscal year in which agricultural commodities are to be shipped under the agreement,

whichever is later.

**(f) Annual report regarding food aid programs and activities**

**(1) Annual report**

Not later than April 1 of each fiscal year, the Administrator and the Secretary shall jointly, or each separately, prepare and submit to the appropriate committees of Congress a report regarding each program and activity carried out under this chapter by the Administrator, the Secretary, or both, as applicable, during the prior fiscal year.

**(2) Contents**

An annual report described in paragraph (1) shall include, with respect to the prior fiscal year, the following:

(A) A list that contains a description of each country and organization that receives food and other assistance under this chapter (including the quantity of food and assistance provided to each country and organization).

(B) A general description of each project and activity implemented under this chapter (including each activity funded through the use of local currencies) and the total number of beneficiaries of the project.

(C) A statement describing the quantity of agricultural commodities made available to, and the total number of beneficiaries in, each country pursuant to—

- (i) this chapter;
- (ii) section 1431(b) of this title;
- (iii) the Food for Progress Act of 1985 (7 U.S.C. 1736o); and
- (iv) the McGovern-Dole International Food for Education and Child Nutrition Program established by section 1736o-1 of this title.

(D) An assessment of the progress made through programs under this chapter towards reducing food insecurity in the popu-

lations receiving food assistance from the United States.

(E) A description of efforts undertaken by the Food Aid Consultative Group under section 1725 of this title to achieve an integrated and effective food assistance program.

(F) An assessment of—

(i) each program oversight, monitoring, and evaluation system implemented under section 1726a(f) of this title; and

(ii) the impact of each program oversight, monitoring, and evaluation system on the effectiveness and efficiency of assistance provided under this subchapter.

(G) An assessment of the progress made by the Administrator in addressing issues relating to quality with respect to the provision of food assistance.

(H) A statement of 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, that further describes the following:

(i) How such funds were used by the eligible organization.

(ii) The actual rate of return for each commodity made available under this chapter, including factors that influenced the rate of return, and, 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 and the Secretary determine to be necessary.

(iii) For each instance in which a commodity was made available under this chapter at a rate of return less than 70 percent, the reasons for the rate of return realized.

(I) For funds expended for purposes of section<sup>1</sup> 1722(e), 1736(b)(6), and 1736a(c)(1)(B) of this title, a detailed accounting of the expenditures and purposes of such expenditures with respect to each such section.

### (3) Rate of return described

For purposes of applying subparagraph (H) of paragraph (2), 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, § 407, as added Pub. L. 89-808, § 2(E), Nov. 11, 1966, 80 Stat. 1537; amended Pub. L. 90-436, § 8, July 29, 1968, 82 Stat. 451; Pub. L. 94-161, title II, § 210, Dec. 20, 1975, 89 Stat. 854; Pub. L. 101-508, title I, § 1204(b)(3), Nov. 5, 1990, 104 Stat. 1388-11; Pub. L. 101-624, title XV, § 1512, Nov. 28, 1990, 104 Stat. 3650; Pub. L. 102-237, title III, §§ 319, 324, 325, 328, 329, 332, Dec. 13, 1991,

105 Stat. 1857, 1858; Pub. L. 104-66, title I, § 1011(e), Dec. 21, 1995, 109 Stat. 709; Pub. L. 104-127, title II, § 216, Apr. 4, 1996, 110 Stat. 957; Pub. L. 106-472, title III, § 310(b), Nov. 9, 2000, 114 Stat. 2076; Pub. L. 107-171, title III, §§ 3010, 3011, May 13, 2002, 116 Stat. 284; Pub. L. 110-246, title III, §§ 3017, 3018(a), June 18, 2008, 122 Stat. 1827; Pub. L. 113-79, title III, §§ 3009, 3010, Feb. 7, 2014, 128 Stat. 776, 777; Pub. L. 115-334, title III, §§ 3111, 3112(a), Dec. 20, 2018, 132 Stat. 4605.)

### Editorial Notes

#### REFERENCES IN TEXT

The Food for Progress Act of 1985, referred to in subsec. (f)(2)(C)(iii), is Pub. L. 99-198, title XI, § 1110, Dec. 23, 1985, 99 Stat. 1472, which is classified to section 17360 of this title.

#### CODIFICATION

In subsec. (c)(2), “chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” on authority of Pub. L. 107-217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### AMENDMENTS

2018—Subsec. (c)(4)(A). Pub. L. 115-334, § 3111, substituted “2023” for “2018” in two places.

Subsec. (f). Pub. L. 115-334, § 3112(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) related to annual report regarding each program and activity carried out under this chapter and annual report regarding the administration of food assistance programs under subchapter III to benefit foreign countries.

2014—Subsec. (c)(4)(A). Pub. L. 113-79, § 3009(1), substituted “2018” for “2012” and “for each of fiscal years 2001 through 2013 not more than \$10,000,000 of such funds and for each of fiscal years 2014 through 2018 not more than \$15,000,000 of such funds” for “for each such fiscal year not more than \$10,000,000 of such funds”.

Subsec. (c)(4)(B). Pub. L. 113-79, § 3009(2), added subpar. (B) and struck out former subpar. (B). Prior to amendment, text read as follows:

“(i) FEASIBILITY ASSESSMENTS.—The Administrator may carry out assessments for the establishment of not less than 2 sites to determine the feasibility of, and costs associated with, using the sites to store and handle agricultural commodities for prepositioning in foreign countries.

“(ii) ESTABLISHMENT OF SITES.—Based on the results of each assessment carried out under clause (i), the Administrator may establish additional sites for prepositioning in foreign countries.”

Subsec. (f)(1). Pub. L. 113-79, § 3010(1), substituted “food aid” for “agricultural trade” in heading.

Subsec. (f)(1)(B)(ii). Pub. L. 113-79, § 3010(2), inserted “and the total number of beneficiaries of the project and the activities carried out through such project” before semicolon at end.

Subsec. (f)(1)(B)(iii). Pub. L. 113-79, § 3010(3)(A), inserted “, and the total number of beneficiaries in,” after “commodities made available to” in introductory provisions.

Subsec. (f)(1)(B)(iii)(III). Pub. L. 113-79, § 3010(3)(B)–(D), added subcl. (III).

2008—Subsec. (c)(4). Pub. L. 110-246, § 3017(1), designated existing provisions as subpar. (A), inserted heading, substituted “2012” for “2007” and “\$10,000,000” for “\$2,000,000”, and added subpar. (B).

Subsec. (c)(5). Pub. L. 110-246, § 3017(2), added par. (5).

Subsec. (f). Pub. L. 110-246, § 3018(a), added subsec. (f) and struck out former subsec. (f) which directed President to prepare an annual report concerning programs

<sup>1</sup> So in original. Probably should be “sections”.

and activities implemented under this chapter for the preceding fiscal year, described contents of report, and directed that it be submitted not later than Jan. 15 of each year to the Committee on Agriculture and the Committee on Foreign Affairs of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

2002—Subsec. (c)(1). Pub. L. 107-171, §3011, designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(4). Pub. L. 107-171, §3010, substituted “through 2007” for “and 2002”.

2000—Subsec. (c)(4). Pub. L. 106-472 added par. (4).

1996—Pub. L. 104-127, §216(2)–(5), which directed amendment of subssecs. (c), (d), (g), and (h), respectively, of this section, was executed to subssecs. (b), (c), (f), and (g), respectively, of this section, to reflect the probable intent of Congress and the intervening amendment by Pub. L. 104-66 which struck out subsec. (b) and redesignated subssecs. (c) to (h) as (b) to (g), respectively. See 1995 Amendment note below.

Subsec. (a)(1). Pub. L. 104-127, §216(1)(A), inserted “or private entity that enters into an agreement under subchapter II of this chapter” after “importing country”.

Subsec. (a)(2). Pub. L. 104-127, §216(1)(B), inserted at end “Resulting contracts may contain such terms and conditions as the Secretary determines are necessary and appropriate.”

Subsec. (b)(1)(A), (2)(A). Pub. L. 104-127, §216(2), inserted “importer or” before “importing country”.

Subsec. (c)(2). Pub. L. 104-127, §216(3)(A), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “No purchase of agricultural commodities from private stocks or purchase of ocean transportation services by the United States Government shall be financed under subchapters III and III-A of this chapter unless such purchases are made on the basis of full and open competition utilizing such procedures as are determined necessary and appropriate by the Administrator.”

Subsec. (c)(4). Pub. L. 104-127, §216(3)(B), struck out heading and text of par. (4). Text read as follows: “Notwithstanding any provision of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) or other similar provisions relating to the making or performance of Federal Government contracts, the Administrator may procure ocean transportation services under this chapter under such full and open competitive procedures as the Administrator determines are necessary and appropriate.”

Subsec. (f)(2)(D). Pub. L. 104-127, §216(4), added subpar. (D).

Subsec. (g). Pub. L. 104-127, §216(5), struck out heading and text of subsec. (g). Text read as follows: “On World Food Day, October 16 of each year, the President shall submit to the appropriate committees of Congress a report, prepared with the assistance of the Secretary and the Administrator, assessing progress towards food security in each country receiving United States Government food assistance. Special emphasis should be given in such report to the nutritional status of the poorest populations in such countries.”

1995—Subsecs. (b) to (h). Pub. L. 104-66 redesignated subssecs. (c) to (h) as (b) to (g), respectively, and struck out former subsec. (b) which required reporting of agricultural commodity or ocean transportation supplier fees.

1991—Subsec. (b)(1). Pub. L. 102-237, §329, struck out “or agricultural commodity donated” after “ocean transportation financed”.

Subsec. (c)(1)(A). Pub. L. 102-237, §324, substituted “subchapter II of this chapter” for “this section”.

Subsec. (c)(1)(C). Pub. L. 102-237, §325, struck out “other” before “foreign government”.

Subsec. (c)(2)(B), (3). Pub. L. 102-237, §319, inserted “subchapter II of” before “this chapter”.

Subsec. (c)(4). Pub. L. 102-237, §328(a), inserted “provides or” after “in which such person” and substituted “of a person” for “if the person is”.

Subsec. (d)(3). Pub. L. 102-237, §328(b), struck out “other” before “foreign government”.

Subsec. (d)(4). Pub. L. 102-237, §332, substituted “the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” for “the Federal Property Act of 1949, as amended.”

1990—Pub. L. 101-624 amended section generally, substituting present provisions for provisions which established an Advisory Committee to survey the general policies relating to the administration of this chapter, including implementation of self-help provisions, uses to be made of foreign currencies, amount of currencies to be reserved in sales agreements for loans to private industry, rates of exchange, interest rates, and terms under which dollar credit sales are made.

Subsec. (c)(4). Pub. L. 101-508 substituted “providing ocean transportation or” for “providing ocean”.

1975—Pub. L. 94-161 inserted “, or their designees (who shall be members of such committees or, in the case of members from the executive branch, who shall have been confirmed by the Senate)” in first sentence.

1968—Pub. L. 90-436 struck out provisions that the vice chairman and one ranking minority member of the specified House committees and the next ranking majority member and one ranking minority member of the specified Senate committees be members of the Advisory Committee, and inserted provisions requiring the Advisory Committee to meet not less than four times during each calendar year and setting forth the order of precedence at such meetings.

### Statutory Notes and Related Subsidiaries

#### 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 AMENDMENTS

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.

Amendment by Pub. L. 101-508 effective Nov. 29, 1990, see section 1301 of Pub. L. 101-508, set out as an Effective Date note under section 1994 of this title.

#### EFFECTIVE DATE

Section effective Jan. 1, 1967, see section 5 of Pub. L. 89-808, set out as an Effective Date of 1966 Amendment note under section 1691 of this title.

### Executive Documents

#### PREPARATION OF ANNUAL REPORT

For provisions requiring Food Assistance Policy Council to prepare annual report pursuant to subsec. (g)(1) [now (f)(1)] of this section, see Ex. Ord. No. 12752, §3(c), Feb. 25, 1991, 56 F.R. 8256, set out as a note under section 1691 of this title.

### § 1736b. Expiration date

No agreements to finance sales or to provide other assistance under this chapter shall be entered into after December 31, 2023.

(July 10, 1954, ch. 469, title IV, §408, as added Pub. L. 89-808, §2(E), Nov. 11, 1966, 80 Stat. 1537; amended Pub. L. 94-161, title II, §211, Dec. 20, 1975, 89 Stat. 854; Pub. L. 95-88, title II, §213, Aug. 3, 1977, 91 Stat. 551; Pub. L. 95-113, title XII, §1207, Sept. 29, 1977, 91 Stat. 957; Pub. L. 96-470, title II, §213, Oct. 19, 1980, 94 Stat. 2246; Pub. L. 97-98, title XII, §1215, Dec. 22, 1981, 95 Stat. 1282; Pub. L. 99-83, title X, §1006, Aug. 8, 1985, 99 Stat. 271; Pub. L. 101-624, title XV, §1512, Nov. 28, 1990, 104 Stat. 3653; Pub. L. 104-127, title II, §217, Apr. 4, 1996, 110 Stat. 957; Pub. L. 107-171, title III, §3012, May 13, 2002, 116 Stat. 284; Pub. L. 110-246,