

CODIFICATION

In text, “section 6101 of title 41” substituted for “section 3709 of the Revised Statutes, as amended” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(5) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

1978—Pub. L. 95-424 provided that the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirement of section 2160 of this title.

1964—Pub. L. 88-489 limited the authorization to the extent necessary to effectuate the chapter, inserted “without regard to the limitations in section 2074 of this title or any guaranteed purchase prices established pursuant to section 2076 of this title, and to take, requisition, condemn,” and “Any contract of purchase made under this section may be made”, provided for just compensation for any right, property, or interest taken, requisitioned, or condemned under this section, and struck out “outside the United States” after “any interest therein”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2076. Guaranteed purchase prices

The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 2134 of this title and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 2133 or section 2134 and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided*, That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced through the use of special nuclear material which was leased or sold by the Commission pursuant to section 2073 of this title.

(Aug. 1, 1946, ch. 724, title I, §56, as added Aug. 30, 1954, ch. 1073, §1, 68 Stat. 931; amended Pub. L. 88-489, §11, Aug. 26, 1964, 78 Stat. 605; Pub. L. 91-560, §2, Dec. 19, 1970, 84 Stat. 1472; renumbered title I, Pub. L. 102-486, title IX, §902(a)(8), Oct. 24, 1992, 106 Stat. 2944.)

Editorial Notes

AMENDMENTS

1970—Pub. L. 91-560 extended the power of the Commission to establish guaranteed purchase prices for uranium produced by persons licensed under section 2133 of this title.

1964—Pub. L. 88-489 substituted provisions which directed the Commission to establish guaranteed purchase prices for plutonium produced by a person licensed under section 2134 of this title and delivered to the Commission prior to Jan. 1, 1971, and for uranium enriched in the isotope 233, for such periods of time as it deems necessary, but not exceeding ten years as to any such period, if produced by a person licensed under said section 2134, and delivered within the period of the guarantee, provided that guaranteed prices established under this section shall not exceed the Commission's estimated value of enriched plutonium or uranium as fuel in reactors, and shall be on a nondiscriminatory basis, and authorized such guaranteed prices only for such enriched plutonium or uranium as is produced through use of material leased or sold pursuant to section 2073 of this title, for provisions requiring the Commission to determine the fair price of special nuclear material by considering the value of the material for its intended use by the United States, and by giving such weight to the cost of production as it found to be equitable, providing that such price was to apply to all licensed producers of the same material, and permitting the Commission to establish guaranteed fair prices for all such material delivered to the Commission for such time as it deemed necessary, but not exceeding seven years.

§ 2077. Unauthorized dealings in special nuclear material

(a) Handling by persons

Unless authorized by a general or specific license issued by the Commission, which the Commission is authorized to issue pursuant to section 2073 of this title, no person may transfer or receive in interstate commerce, transfer, deliver, acquire, own, possess, receive possession of or title to, or import into or export from the United States any special nuclear material.

(b) Engagement or participation in development or production

It shall be unlawful for any person to directly or indirectly engage or participate in the development or production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, and the Nuclear Regulatory Commission for the consider-

ation of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further*, That the export of component parts as defined in section 2014(v)(2) or (cc)(2) of this title shall be governed by sections 2139 and 2155 of this title: *Provided further*, That notwithstanding section 7172(d) of this title, the Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 2074(d), section 2094, or section 2141(b) of this title.

(c) Distribution by Commission

The Commission shall not—

(1) distribute any special nuclear material to any person for a use which is not under the jurisdiction of the United States except pursuant to the provisions of section 2074 of this title; or

(2) distribute any special nuclear material or issue a license pursuant to section 2073 of this title to any person within the United States if the Commission finds that the distribution of such special nuclear material or the issuance of such license would be inimical to the common defense and security or would constitute an unreasonable risk to the health and safety of the public.

(d) Establishment of classes of special nuclear material; exemption of materials, kinds of uses and users from requirement of license

The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the

requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

(e) Transfer, etc., of special nuclear material

Special nuclear material, as defined in section 2014 of this title, produced in facilities licensed under section 2133 or 2134 of this title may not be transferred, reprocessed, used, or otherwise made available by any instrumentality of the United States or any other person for nuclear explosive purposes.

(Aug. 1, 1946, ch. 724, title I, § 57, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 932; amended Pub. L. 88-489, § 12, Aug. 26, 1964, 78 Stat. 605; Pub. L. 93-377, § 3, Aug. 17, 1974, 88 Stat. 475; Pub. L. 95-242, title III, § 302, Mar. 10, 1978, 92 Stat. 126; Pub. L. 97-415, § 14, Jan. 4, 1983, 96 Stat. 2075; renumbered title I, Pub. L. 102-486, title IX, § 902(a)(8), Oct. 24, 1992, 106 Stat. 2944; Pub. L. 105-277, div. G, title XII, § 1225(d)(1), Oct. 21, 1998, 112 Stat. 2681-774; Pub. L. 108-458, title VI, § 6803(a), Dec. 17, 2004, 118 Stat. 3768.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to this section were contained in section 1805(a)(3) of this title, prior to the general amendment and renumbering of act Aug. 1, 1946, by act Aug. 30, 1954.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-458 substituted “or participate in the development or production of any special nuclear material” for “in the production of any special nuclear material”.

1998—Subsec. (b). Pub. L. 105-277 struck out “the Arms Control and Disarmament Agency,” after “after consultation with” in first sentence and “the Director of the Arms Control and Disarmament Agency,” after “Defense, and Commerce,” in second sentence.

1983—Subsec. (e). Pub. L. 97-415 added subsec. (e).

1978—Subsec. (b). Pub. L. 95-242 substituted “except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States” for “except (1) under an agreement for cooperation made pursuant to section 2153 of this title, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States” in existing provisions and inserted provisos relating to determinations by the Secretary of Energy, the procedures to be followed in processing authorization requests, the export of component parts, and the jurisdiction of the Secretary of Energy.

1974—Subsec. (d). Pub. L. 93-377 added subsec. (d).

1964—Pub. L. 88-489 amended section generally, and among other changes, included all special nuclear materials within the section, struck out condition that such material be “the property of the United States”, included delivery, acquisition, ownership and receiving possession of or title to any special nuclear material within the acts prohibited to persons, prohibited the Commission from issuing a license pursuant to section 2073 of this title if the Commission finds that the issuance would be inimical to the common defense and security or would constitute an unreasonable risk to

the health and safety of the public, and extended the power of the Commission to refuse to distribute any special nuclear material if it finds that the distribution would constitute an unreasonable risk to the health and safety of the public.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105-277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Executive Documents

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2077a. Interagency review of applications for the transfer of United States civil nuclear technology

(a) Annual Reports on transfers to covered foreign countries

At the same time as the President submits to Congress the annual budget request under section 1105 of title 31 for a fiscal year, the Secretary of Energy shall submit to the appropriate congressional committees a report that includes—

- (1) a description of the authorizations under section 2077(b) of this title to transfer United States civil nuclear technology to a covered foreign country during the preceding year; and
- (2) a statement of whether any agency required to be consulted under that section or pursuant to regulation objected to or sought conditions on each such transfer.

(b) Determination of technologies to be protected

(1) In general

Not later than 90 days after November 25, 2015, and every five years thereafter, the Secretary of Energy shall—

- (A) in consultation with the Secretary of State, the Secretary of Commerce, the Secretary of Defense, the Director of National Intelligence, and the Nuclear Regulatory Commission, determine the critical United States civil nuclear technologies that should be protected from diversion to a military program of a covered foreign country, in-

cluding with respect to a naval propulsion or weapons program; and

- (B) notify the appropriate congressional committees with respect to the determination and the technologies covered by the determination.

(2) Notification

(A) In general

Except as provided in subparagraph (B), not later than 14 days before making an authorization under section 2077(b) of this title for the transfer of a technology covered by a determination under paragraph (1) to a covered foreign country, the Secretary of Energy shall submit to the appropriate congressional committees a report that includes—

- (i) a notification of the intention of the Secretary to make the authorization for the transfer of such technology; and
- (ii) a statement of whether any agency required to be consulted under such section 2077(b) of this title or pursuant to regulation objected to or sought conditions on the transfer.

(B) Waiver of deadline

The Secretary may waive the requirement under subparagraph (A) to submit the report required by that subparagraph not later than 14 days before making an authorization for the transfer of a technology covered by a determination under paragraph (1) to a covered foreign country if the Secretary—

- (i) determines that an imminent radiological hazard exists; and
- (ii) not later than 7 days after determining that such hazard exists, submits to the appropriate congressional committees—

(I) a certification that the hazard exists;

(II) a justification for the waiver; and

(III) the notification required by clause (i) of subparagraph (A) and the statement required by clause (ii) of that subparagraph.

(c) Consultations with intelligence community

(1) In general

The Secretary of Energy shall expeditiously revise part 810 of title 10, Code of Federal Regulations, to ensure that the Director of National Intelligence—

- (A) is consulted with respect to the views of the intelligence community (as defined in section 3003(4) of title 50) with respect to each authorization issued under section 2077(b) of this title for the transfer of United States civil nuclear technology to a covered foreign country before the determination to approve or disapprove the request for the authorization; and

(B) is provided with an opportunity to present the views of the Director and the intelligence community on the national security risks of the transfer, if any.

(2) Submission to Congress

The Secretary of Energy, jointly with the Director of National Intelligence, shall include