

(Pub. L. 95–501, title III, §302, formerly §303, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3680; renumbered §302 and amended Pub. L. 110–246, title III, §3103(b)(2), (3), June 18, 2008, 122 Stat. 1832.)

Editorial Notes

PRIOR PROVISIONS

A prior section 302 of Pub. L. 95–501 was renumbered section 301 and is classified to section 5652 of this title.

AMENDMENTS

2008—Pub. L. 110–246, §3103(b)(3), struck out “, such as that established under section 5651 of this title,” after “any program”.

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.

SUBCHAPTER IV—GENERAL PROVISIONS

PART A—PROGRAM CONTROLS

§ 5661. Program controls for export programs

(a) Arrival certification

With respect to a commodity provided, or for which financing or a credit guarantee or other assistance is made available, under a program authorized in section 5621 or 5622 of this title, the Commodity Credit Corporation shall require the exporter of the commodity to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and shall allow representatives of the Commodity Credit Corporation access to the records or documents as needed, to verify the arrival of the commodity in the country that is the intended destination of the commodity.

(b) Diversion

The unauthorized diversion of commodities under the programs authorized in sections 5621 and 5622 of this title is prohibited. The Commodity Credit Corporation shall establish procedures providing for the annual audit of a sufficient number of export transactions under such programs to ensure that the agricultural commodities that were the subject of such transactions arrived in the country of destination as provided in the sales agreement.

(c) Good faith

The failure of an exporter, seller or other person to comply with the provisions of this section shall not affect the validity of any credit guarantee or other obligation of the Commodity Credit Corporation under the programs under this chapter with respect to any exporter, seller, or person who had no knowledge of such failure to comply at the time such exporter, seller, or person was assigned the credit guarantee or at the time the Corporation entered into such obligation.

(Pub. L. 95–501, title IV, §401, as added Pub. L. 101–624, title XV, §1531, Nov. 28, 1990, 104 Stat. 3680; amended Pub. L. 104–127, title II, §246, Apr. 4, 1996, 110 Stat. 969; Pub. L. 110–246, title III, §3103(b)(4), June 18, 2008, 122 Stat. 1832.)

Editorial Notes

PRIOR PROVISIONS

A prior section 401 of Pub. L. 95–501 enacted sections 1765a to 1765h and 1769 of this title, amended section 1766b of this title, and redesignated sections 1762(d), (f), and 1763, as sections 1766a to 1766c of this title prior to the complete revision of Pub. L. 95–501 by Pub. L. 101–624.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–246, §3103(b)(4)(A), substituted “section 5621 or 5622” for “section 5621, 5622, or 5651”.

Subsec. (b). Pub. L. 110–246, §3103(b)(4)(B), substituted “sections 5621 and 5622” for “sections 5621, 5622, and 5651”.

1996—Subsec. (a). Pub. L. 104–127 added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “With respect to commodities or other assistance provided, or for which financing or credit guarantees are made available, under the programs authorized in sections 5621, 5622, and 5651 of this title, the Commodity Credit Corporation shall—

“(1) require the exporter to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and have access to such documents or records as needed to verify the arrival of agricultural commodities exported in connection with such programs in the countries that were the intended destination of such commodities; and

“(2) obtain certification from the seller or exporter of record of such commodities, that there were no corrupt payments or extra sales services, or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complied with applicable United States law.”

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.

§ 5662. Compliance provisions

(a) Records

(1) In general

In the administration of the programs established under sections 5621, 5622, and 5623(b) of this title the Secretary shall require by regulation each exporter or other participant under the program to maintain all records concerning a program transaction for a period of not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records.

(2) Confidentiality

The personally identifiable information contained in reports under subsection (a) may be withheld in accordance with section 552(b)(4) of title 5. Any officer or employee of the Department of Agriculture who knowingly discloses confidential information as defined by section 1905 of title 18 shall be subject to section 1905 of title 18. Nothing in this subsection shall be construed to authorize the withholding of information from Congress.

(b) Violation

If any exporter, assignee, or other participant has engaged in fraud with respect to the pro-

grams authorized under this chapter, or has otherwise violated program requirements under this chapter, the Commodity Credit Corporation may—

- (1) hold such exporter, assignee, or participant liable for any and all losses to the Corporation resulting from such fraud or violation;
- (2) require a refund of any assistance provided to such exporter, assignee, or participant plus interest, as determined by the Secretary; and
- (3) collect liquidated damages from such exporter, assignee, or participant in an amount determined appropriate by the Secretary.

The provisions of this subsection shall be without prejudice to any other remedy that is available under any other provision of law.

(c) Suspension and debarment

The Commodity Credit Corporation may suspend or debar for 1 or more years any exporter, assignee, or other participant from participation in one or more of the programs authorized by this chapter if the Corporation determines, after opportunity for a hearing, that such exporter, assignee, or other participant has violated the terms and conditions of the program or of this chapter and that the violation is of such a nature as to warrant suspension or debarment.

(d) False certifications

The provisions of section 1001 of title 18 shall apply to any false certifications issued under this chapter.

(Pub. L. 95-501, title IV, § 402, as added Pub. L. 101-624, title XV, § 1531, Nov. 28, 1990, 104 Stat. 3681; amended Pub. L. 104-127, title II, § 247, Apr. 4, 1996, 110 Stat. 969; Pub. L. 110-246, title III, § 3103(b)(5), June 18, 2008, 122 Stat. 1833; Pub. L. 115-334, title III, § 3201(b)(1)(B), Dec. 20, 2018, 132 Stat. 4616.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-334 substituted “and 5623(b)” for “and 5623”.

2008—Subsec. (a)(1). Pub. L. 110-246 substituted “sections 5621, 5622, and 5623” for “sections 5621, 5622, 5623, and 5651”.

1996—Subsec. (a)(2), (3). Pub. L. 104-127 redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “The Secretary may require by regulation an exporter or other participant in the programs to make records available to the Secretary with respect to non-program transactions if such records would pertain directly to the review of program-related transactions undertaken by such exporter or participant, as determined by the Secretary.”

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.

§ 5663. Departmental administration system

(a) In general

With respect to each commercial export promotion program of the Department of Agri-

culture or the Commodity Credit Corporation, the Secretary shall—

- (1) specify by regulation the criteria used to evaluate and approve proposals for that program;
- (2) establish a centralized system to permit the Foreign Agricultural Service to provide the history and current status of any proposal;
- (3) provide for regular audits of program transactions to determine compliance with program objectives and requirements; and
- (4) establish criteria to evaluate loans eligible for guarantees by the Commodity Credit Corporation, so as to ensure that the Corporation does not assume undue risk in providing such guarantees.

(b) Accessibility of information

Information pertaining to the status of a particular proposal shall be retrievable within the central system by appropriate categories, as determined appropriate by the Secretary.

(Pub. L. 95-501, title IV, § 403, as added Pub. L. 101-624, title XV, § 1531, Nov. 28, 1990, 104 Stat. 3682.)

§ 5664. Repealed. Pub. L. 104-127, title II, § 248, Apr. 4, 1996, 110 Stat. 969

Section, Pub. L. 95-501, title IV, § 404, as added Pub. L. 101-624, title XV, § 1531, Nov. 28, 1990, 104 Stat. 3682; amended Pub. L. 102-237, title III, § 312, Dec. 13, 1991, 105 Stat. 1856, related to regulations to implement export promotion provisions.

PART B—MISCELLANEOUS PROVISIONS

§ 5671. Agricultural embargo protection

(a) Prerequisites; scope of compensation

Notwithstanding any other provision of law, if—

- (1) the President or other member of the executive branch of the Federal Government causes the export of any agricultural commodity to any country or area of the world to be suspended or restricted for reasons of national security or foreign policy under the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.)¹ or under any other provision of law;

(2) such suspension or restriction of the export of such agricultural commodity is imposed other than in connection with a suspension or restriction of all exports from the United States to such country or area of the world; and

- (3) sales of such agricultural commodity for export from the United States to such country or area of the world during the year preceding the year in which the suspension or restriction is imposed exceeds 3 percent of the total sales of such commodity for export from the United States to all foreign countries during the year preceding the year in which the suspension or restriction is in effect;

the Secretary shall compensate producers of the commodity involved by making payments available to such producers, as provided in subsection (b) of this section.

¹ See References in Text note below.