Case Number: 2009-0528-F-2

FOIA MARKER

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. paper	re Next Steps (8 pages)	11/28/1994	P1/b(1)
001b. paper	re Background, Alternative Models (3 pages)	11/28/1994	P1/b(1)
002a. memo	Robert Gallucci to Secretary of State re Circular 175 (4 pages)	00/00/1994	P1/b(1)
002b. draft	memo of law re circular 175 (4 pages)	00/00/1994	P1/b(1)
003a. fax	cover, re Draft KEDO Diagram/Talking Points (1 page)	11/16/1994	P1/b(1)
003b. memo	Gary Samore to distribution (not included) re Draft KEDO Documents (1 page)	11/16/1994	P1/b(1)
004. notes	re Summary of Conclusions for NSC Deputies' Meeting (3 pages)	11/02/1994	P1/b(1)
005. paper	re LWR Supply Contract (6 pages)	00/00/1994	P1/b(1)
006. draft	re agreement on the establishment of KEDO (5 pages)	00/00/1994	P1/b(1)
007. paper	re Next Steps (7 pages)	01/14/1994	P1/b(1)
008. memo	Walt Slocombe to Dan Pozeman re Operations Team Spirit 94 (2 pages)	10/07/1994	P1/b(1)

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National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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JB

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DEPARTMENT OF STATE

'94 NOV 28 P2:00

B

S/S #

1994 NOV 28 PM 12

Please File North Korea

014324

MESSAGE NO. ________ CLASSIFICATION ~~Confidential~~ No. Pages 12

FROM: VE Carotenuto | S/AL | 647-1868 | 6317
(Officer name) (Office symbol) (Extension) (Room number)

MESSAGE DESCRIPTION Dec. 1 DC Discussion Paper 4:30 pm

Agency/	DELIVER TO:	Extension	Room No.
NSC	Dan Poneman	202-456-9181	382
OSD	Cpt. Steve Loeffler	703-695-6565	4E830
JCS	Maj. Lloyd Miles	703-695-8134	2E1008
Treasury	Lisa Roberts	202-622-1983	2013
DOE	Ken Luongo	202-586-2102	4C014
OMB	Jim Nix	202-395-3859	
CIA	John Serabian	703-874-0445	5P0130

CLEARANCE ☐ INFORMATION ☒ PER REQUEST ☐ COMMENT ☐

REMARKS: Please distribute to your Deputies for the DC Meeting

S/S Officer: [signature]

North Korea

UNCLASSIFIED UPON REMOVAL OF CLASSIFIED ATTACHMENTS
Initials: [initials] Date: 03/24/15
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Tab A 9/12

Program Coordinator Responsibilities

eneral Statement of Work:

The Program Coordinator will provide a team of management nd technical specialists that will review and monitor the esign, engineering, and construction of the LWR Project. The rimary assignment of the Coordinator is to review the work of he Prime Contractor to assure that all work is in accordance ith KEDO's contract with the Prime Contractor and with the EDO-DPRK contract. The Program Coordinator reports to the EDO Executive Director.

esponsibilities include:

- Initial review of project design criteria and basic plant design documents provided by the Prime Contractor in order to advise KEDO on fulfillment of contract requirements -- is it what we agreed to provide to the DPRK?

- Interaction with DPRK, including construction contracting with DPRK firms and provision of other services as required, e.g., training; coordinate contracts with DPRK and the Prime Contractor.

- Review of the Prime Contractor's procurement program so as to advise KEDO with respect to compliance with contract criteria -- is the distribution of the work among contributing countries as agreed to?

- Review and make recommendations to KEDO regarding any large change orders in KEDO contract with the Prime Contractor, i.e., any change in design or materials that may significantly impact cost and schedule.

- Technical support to KEDO on dispute resolution between any of the parties -- e.g., proposed design, equipment or construction changes.

- On-site construction monitoring services, including quality of the work, testing and system turnover.

- Review of the Prime Contractors' applications for payment and recommendation to KEDO to determine that the work is sufficient to justify drawdown payments -- is the work complete and are schedules being met?

- Using input from site visits, to provide the Executive Director with assessments of the Prime Contractors' ability to meet schedule and budget, including recommendations.

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AGREEMENT ON THE ESTABLISHMENT OF THE KOREAN ENERGY DEVELOPMENT ORGANIZATION

The Government of the Republic of Korea, the Government of Japan, and the Government of the United States of America:

Affirming the nonproliferation goals and objectives embodied in the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea (DPRK), signed in Geneva on October 21, 1994;

Recognizing the critical importance of the nonproliferation steps that must be taken by the DPRK, as described in the Agreed Framework, as a condition of implementation of the Agreed Framework; and

Wishing to cooperate in taking the steps necessary to implement the Agreed Framework, consistent with the Charter of the United Nations and the Statute of the International Atomic Energy Agency;

Convinced of the need to establish an organization, as contemplated in the Agreed Framework, to coordinate cooperation among interested parties and to facilitate the financing and execution of projects needed to implement the Agreed Framework.

Have agreed as follows:

ARTICLE I: Establishment of the Organization

The Korean Energy Development Organization (hereinafter referred to as "KEDO" or "the Organization") is established upon the terms and conditions hereinafter set forth.

ARTICLE II: Purposes

The purposes of the Organization shall be to: (1) provide for the financing and construction of light-water reactors of approximately 2,000 MW(e) in the Democratic People's Republic of Korea (hereinafter referred to as "the DPRK");

(2) provide for the financing and delivery of interim energy alternatives in lieu of the energy from the DPRK's graphite-moderated reactors pending construction of the first light-water reactor unit; (3) providing for disposition of the DPRK's spent fuel; and (4) provide for the financing and implementation of any other measures necessary to accomplish the foregoing or otherwise to carry out the objectives of the Agreed Framework.

ARTICLE III: Functions

In carrying out these purposes, the Organization may do any of the following:

(a) Evaluate and administer projects designed to further the purposes of the Organization;

(b) Receive funds from Members or other countries or entities for financing projects designed to further the purposes of the Organization, manage and disburse such funds, and retain for Organization purposes any interest that accumulates on such funds;

(c) Receive funds or other compensation from the DPRK in payment for the goods and services provided by the Organization;

(d) Cooperate and enter into arrangements with appropriate financial institutions, as may be agreed upon, for the handling of funds received by the Organization or designated for projects of the Organization;

(e) Acquire any real property, facilities, equipment, technology, or goods necessary for achieving the purposes of the Organization;

(f) Enter into contracts or other arrangements, including loan agreements, for the carrying out, evaluation, or supervision of projects designed to further the purposes of the Organization;

(g) Coordinate with and assist states, localities and other public entities, national and international institutions, and private parties in carrying out activities that further the purposes of the Organization;

(h) Dispose of any receipts, funds, accounts, or assets of the Organization and distribute the proceeds in accordance with the obligations of the Organization, with any remaining funds to be distributed in an equitable manner to the Members and Participating Countries, as may be determined by the Organization.

ARTICLE IV: Participation in the Organization

(a) The Members of the Organization shall be the Republic of Korea, Japan, and the United States of America.

(b) Countries may become Participating Countries in the Organization by providing funds, goods, or services to the Organization or participating on an Advisory Committee of the Organization, subject to the approval of the Executive Board.

(c) Meetings of the Members and Participating Countries of the Organization shall be held annually or as determined by the Executive Board of the Organization.

ARTICLE V: Executive Board

(a) The authority of the Organization shall be vested in the Executive Board, which shall consist of representatives of the Member Countries. The representative of the United States of America shall serve as Chair of the Executive Board.

(b) The Executive Board shall meet at such times as it may determine.

(c) A majority of the representatives to the Executive Board shall constitute a quorum.

(d) Each representative shall have one vote. Decisions of the Executive Board shall require a consensus of the representatives present and voting.

(e) The Executive Board may adopt such rules and regulations as may be necessary or appropriate to achieve the purposes of the Organization.

ARTICLE VI: Executive and Deputy Directors

(a) An Executive Director shall be appointed by the Chair of the Executive Board, subject to the approval of the Executive Board, as soon as possible after this Agreement enters into force.

(b) The Executive Director shall exercise all the powers delegated to him or her by the Executive Board and shall be responsible for conducting the ordinary business of the Organization, including the establishment of a headquarters, the organization of a staff, the preparation of annual budgets, the procurement of financing, and the execution and administration of contracts to achieve the purposes of the Organization. The Executive Director may delegate such powers to other officers or staff members as he or she deems appropriate.

(c) The Executive Director shall be assisted by a Principal Deputy Director appointed by the Chair of the Executive Board, a Deputy Director for Operations appointed by the Republic of Korea's representative to the Executive Board, and a Deputy Director for Finance appointed by Japan's representative to the Executive Board. Each appointment of a Deputy Director shall be subject to the approval of the Executive Board.

(d) The Executive Director and the Deputy Directors shall be appointed for terms of two years and may be reappointed. The terms of employment, including salaries, of these officers shall be determined by the Executive Board. The Executive Director and the Deputy Directors may be removed prior to the expiration of their terms by a decision of the Executive Board.

(e) The Executive Director shall have the authority to approve projects, execute contracts, and enter into other financial obligations on behalf of the Organization, provided that projects, contracts, and obligations with a value in excess of $10 million must be approved by the Executive Board in advance.

(f) The Executive Director shall establish staff positions and terms of employment, including salaries, subject to the approval of the Executive Board. The Executive Director shall appoint qualified personnel to such staff positions and dismiss personnel as necessary, in accordance with rules and regulations to be issued by the Executive Director. The Executive Director shall seek to appoint a staff in which the nationals of the Member Countries are represented, subject to the paramount importance of securing the highest standards of integrity, efficiency, and technical competence.

(g) The Executive Director shall contract out technical and operational functions to the maximum extent practicable, with due regard to cost and the achievement of efficiency, security, and technical competence.

(h) The Executive Director shall hire a comptroller and obtain the services of firm to audit the accounts of the Organization.

(i) The Executive Director shall keep the Executive Board informed of the activities and finances of the Organization and may raise any matter with any Member. Each Member shall designate an appropriate government official with whom the Executive Director and the Deputy Directors may communicate in connection with matters arising under this Agreement

(j) In the event that the Executive Director is absent or unable to carry out his duties, the Principal Deputy Director shall serve as Acting Executive Director with the capacity to exercise all of the powers of the Executive Director. In the event that the Principal Deputy Director is unable to fulfill this function, the Executive Director or the Executive Board shall designate another Deputy Director to serve as Acting Executive Director.

(k) The Executive Director, with the advice of the Deputy Directors, shall prepare fiscal and administrative rules and regulations consistent with this Agreement and the purposes of the Organization. The regulations shall be submitted to the Executive Board for its approval prior to implementation.

ARTICLE VII: Advisory Committees

(a) The Executive Board shall establish Advisory Committees to provide advice to the Executive Director on specific projects being carried out by the Organization or proposed to be carried out by the Organization. Advisory Committees shall be established for the light-water reactor project, the provision of alternative energy, and such other projects as the Executive Board may determine.

(b) Each Advisory Committee shall include representatives of the Members of the Organization and of those Participating Countries that have contributed funds, goods, or services to the Organization for use in the project for which the Advisory Committee was established.

(c) The Advisory Committees shall meet at such times as they may determine.

(d) The Executive Director shall keep the Advisory Committees fully informed of matters pertinent to their respective projects and shall give due consideration to the recommendations of the Advisory Committees.

ARTICLE VIII: Finances

(a) The budget for each fiscal year shall be prepared by the Executive Director and shall be approved by the Executive Board. The Organization's fiscal year shall be from October 1 to September 30.

(b) Each Member and Participating Country may contribute such funds to the Organization or the Organization's contractors as it deems appropriate. Contributions shall be made by cash deposit, escrow, letter of credit, promissory note, or by such other legal means as may be agreed and in such currency as may be agreed.

(c) The Organization may seek contributions from such other public or private sources as it deems appropriate.

(d) The Organization shall establish an account or accounts to receive funds from Members, Participating Countries, or other sources. Interest or dividends accruing on such accounts shall be reinvested for activities of the Organization. Excess funds shall be distributed as set forth in article III(h).

ARTICLE IX: Supply of Goods and Services

(a) Members and Participating Countries may make available to the Organization or its contractors goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

(b) The Organization may accept from such other public or private sources as it deems appropriate any goods, services, equipment, and facilities that may be of assistance in achieving the purposes of the Organization.

(c) The Executive Director shall be responsible for valuing in-kind contributions to the Organization, whether direct or indirect, in order to keep accurate records of the overall contributions from Members, Participating Countries, and other sources. Members and Participating Countries shall cooperate with the Executive Director in the valuation process, including by providing regular reports of in-kind contributions and access to records necessary to verify the value of such contributions.

ARTICLE X: Projects

(a) The Executive Director shall evaluate proposed projects related to the purposes of the Organization. Any Member Country, Advisory Committee, or Participating Country may request that a project be evaluated by the Executive Director. Such requests shall be accompanied by an explanation of the purpose of the project and a detailed description of the project, including cost figures and any applicable designs or plans.

(b) In considering whether to approve a project, the Executive Director shall give due consideration to the views of those Members and Participating Countries that would provide the principal funding for such project.

ARTICLE XI: Annual Report

The Executive Director shall submit to the Executive Board an annual report on the activities of the Organization, which shall include a description of the status of the LWR project and other projects, a comparison of planned activities to completed activities, and an audited statement of the Organization's accounts. The Executive Director shall distribute the annual report to the Advisory Committees and all Participating Countries.

ARTICLE XII: Status

(a) The Organization shall possess juridical personality and, in particular, full capacity to: (1) contract; (2) conclude agreements with states or international organizations; (3) acquire and dispose of real and personal property; and (4) institute legal proceedings. It may exercise such other powers as shall be necessary in furtherance of its purposes and functions, consistent with this Agreement.

(b) No Member or Participating Country shall be liable, by reason of its status as a Member or Participating Country, for acts or obligations of the Organization.

(c) Information provided to the Organization by a Member or Participating Country shall be used exclusively for the purposes of the Organization and shall not be publicly disclosed without the express consent of that Member or Participating Country.

ARTICLE XIII: Amendment and Entry Into Force

(a) Amendments to this Agreement may be proposed by any Member and must be approved by the Executive Board. Amendments shall come into force for all Members when the Members have exchanged notifications that they have accepted the amendment in accordance with their respective constitutional process.

(b) This Agreement shall enter into force upon signature.

For Japan: ______________________________

For the Republic of Korea: ______________________________

For the United States of America: ______________________________

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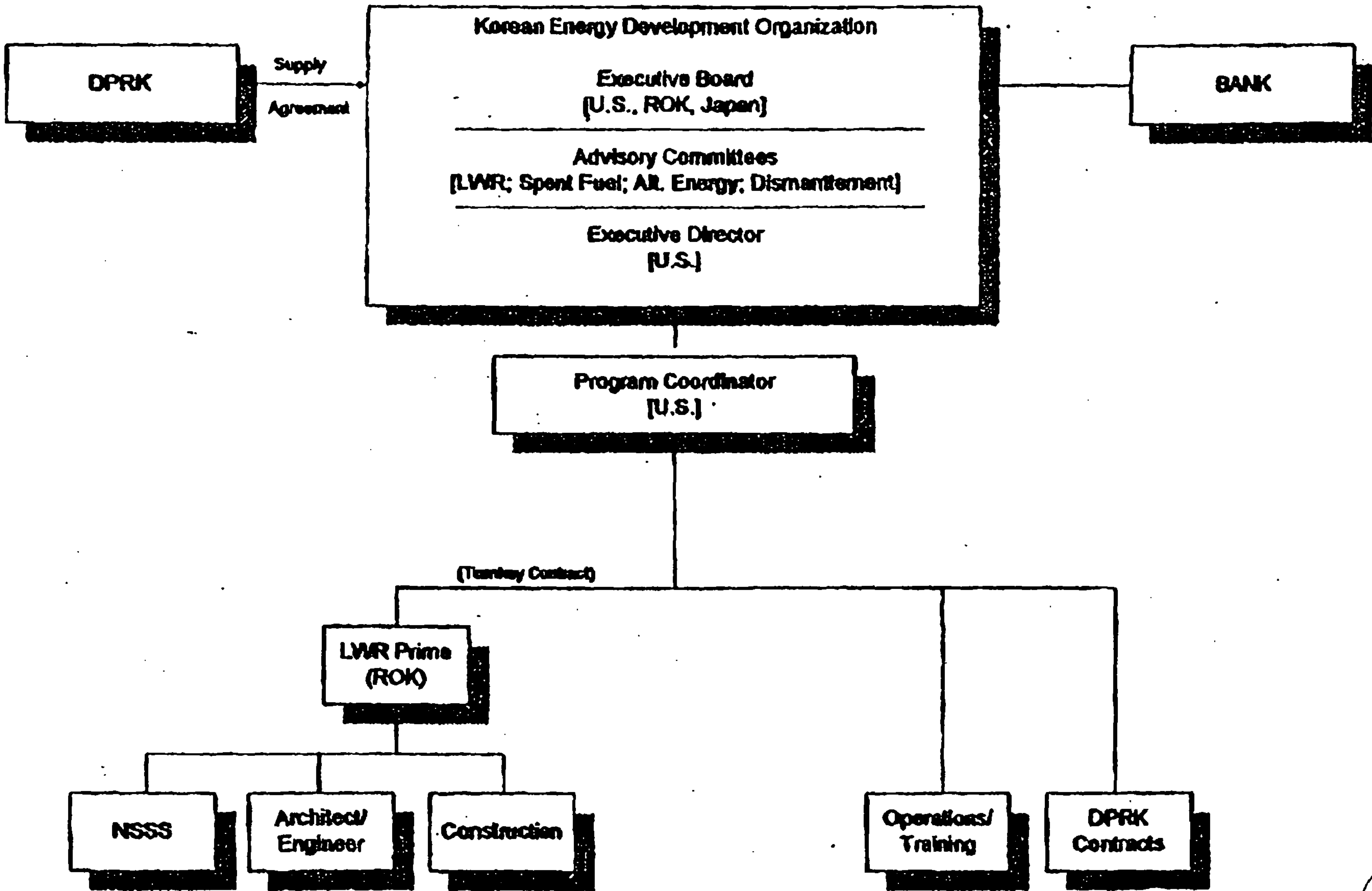
Notional Concept
KEDO Organization for LWR Project



2/4

3/4

KEDO Organizational Responsibilities

KEDO Executive Board:

U.S., ROK, and Japan;

Establishes overall KEDO-DPRK supply agreement policy in accordance with the Agreed Framework between the U.S. and the DPRK;

Ensures appropriate funding is available;

Directs and reviews the actions of the Executive Director and Advisory Committees.

KEDO Advisory Committees

Composed of KEDO members as required;

Provides advice to the Executive Board and the Executive Director on the LWR, Spent Fuel, Alternative Energy and Facility Dismantlement efforts.

U.S. Executive Director:

Reports to the Executive Board;

Consults with Advisory Committees;

Periodically report LWR and other project status to the Executive Board and other KEDO members;

Authority, upon the approval of the Board, to sign supply agreement with DPRK on behalf of KEDO establishing the LWR project terms and conditions;

Establishes and administers small KEDO staff and headquarters;

Retains legal, financial and technical consultant support as required;

Collects and disperses financial contributions from KEDO members and disperses any DPRK payments;

Preparation of annual KEDO budgets and monitoring of expenditures;

Selects U.S. company to perform project coordination function and oversee its performance;

4/4

Coordinate and implement financial and technical oversight of the LWR project;

LWR project technical dispute resolution.

Program Coordinator:

Reports to the KEDO Executive Director on all aspects of the LWR project, schedule and cost.

U.S. Company under commercial contract to KEDO in accordance with the KEDO-DPRK agreement;

Provides technical support in the selection of the LWR prime contractor to design and build the LWR;

Provides technical support in the definition of project tasks, schedule and DPRK contribution to fulfill the KEDO-DPRK supply agreement;

Review and monitor the work of the LWR project contractors including project schedule, cost, and quality assurance and control;

Resolution of technical disputes including concurrence of change orders;

Interaction with the DPRK technical ministries/agencies responsible for the LWR.

LWR Prime Contractor:

Reports to the U.S. Program Coordinator;

Responsible for the design, fabrication of components, construction and quality control of the LWR project on a turnkey basis;

Contracting, coordination, integration and management of the NSSS, A/E, component manufacturing and LWR construction subcontractor activities;

Production, quality, cost and schedule control of subcontractors;

Makes necessary arrangements for technology transfer/licensing.

File North Korea

FAX TO ROTH ON TRIP

CC: AOKI
JAMIE BAKER

When Zumwalt called I referred him to State/EAP for guidance.

Any views?

DP

E. R. ZUMWALT, JR.
ADMIRAL, U. S. NAVY (RET.)

November 15, 1994

VIA FAX 202-647-7388

Mr. Lynn Turk
Coordinator, North Korea
Department of State
Main State Department Room 5313
2201 C Street, NW
Washington, DC 20520

Dear Mr. Turk:

With the knowledge of the NSC Staff and your office, I have accepted an invitation from Kim Yong Sun, Chairman, Asia-Pacific Peace Committee of North Korea, for my son, Jim Zumwalt, Mrs. Zumwalt and me to visit North Korea departing Washington on Saturday, November 26, and being in Pyongyang from November 29-December 6.

As you know, we have also been asked by Mr. Inthasith Somboon, a Laotian citizen, who has an agreement with the Communist Party of North Korea to act as their agent in introducing free-world businesses to the prospective North Korean market to be prepared to discuss, in theory, future opportunities for U.S. businesses in the economic free trade zone being established in North Korea. (Mr. Somboon is a friend, related by marriage to the Vietnamese family we took into our home after the fall of Saigon.)

The purpose of this letter is to request that I be provided guidance as to whether general discussions concerning future U.S. business ventures in North Korea, once trade sanctions have been lifted, can be carried out during our visit.

Mr. Lynn Turk
November 15, 1994
Page Two

I would be grateful for any guidance that can be provided before my departure.

Sincerely,

E R Zumwalt Jr

E. R. Zumwalt, Jr.
Admiral, USN (Retired)

1500 Wilson Boulevard, Suite 641
Arlington, Virginia 22209

Tel: (703) 527-5380
Fax: (703) 528-5795

cc: Daniel B. Poneman
Special Assistant to the President
National Security Council
Mr. Richard Newcomb
Director, Office of Foreign Assets Control
Department of the Treasury

NATIONAL SECURITY COUNCIL
WASHINGTON D.C. 20506

November 4, 1994

ACTION

MEMORANDUM FOR SAMUEL R. BERGER

THROUGH: DANIEL PONEMAN

FROM: STEVEN AOKI

SUBJECT: Summary of Conclusions for Deputies Committee Meeting on Korea

Attached at Tab I is the Summary of Conclusions for the Deputies Committee Meeting on Korea held on November 2, 1994.

RECOMMENDATION

That you authorize Will Itoh to sign the memorandum at Tab I.

Approved srb Disapproved _____

Attachment
Tab I Memorandum to the Agencies
Tab A Summary of Conclusions

DECLASSIFIED E.O. 13526
White House Guidelines,
September 11, 2006
By CW NARA, Date 03/24/15
2009-0528-F

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
004. notes	re Summary of Conclusions for NSC Deputies' Meeting (3 pages)	11/02/1994	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:
North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
005. paper	re LWR Supply Contract (6 pages)	00/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
006. draft	re agreement on the establishment of KEDO (5 pages)	00/00/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

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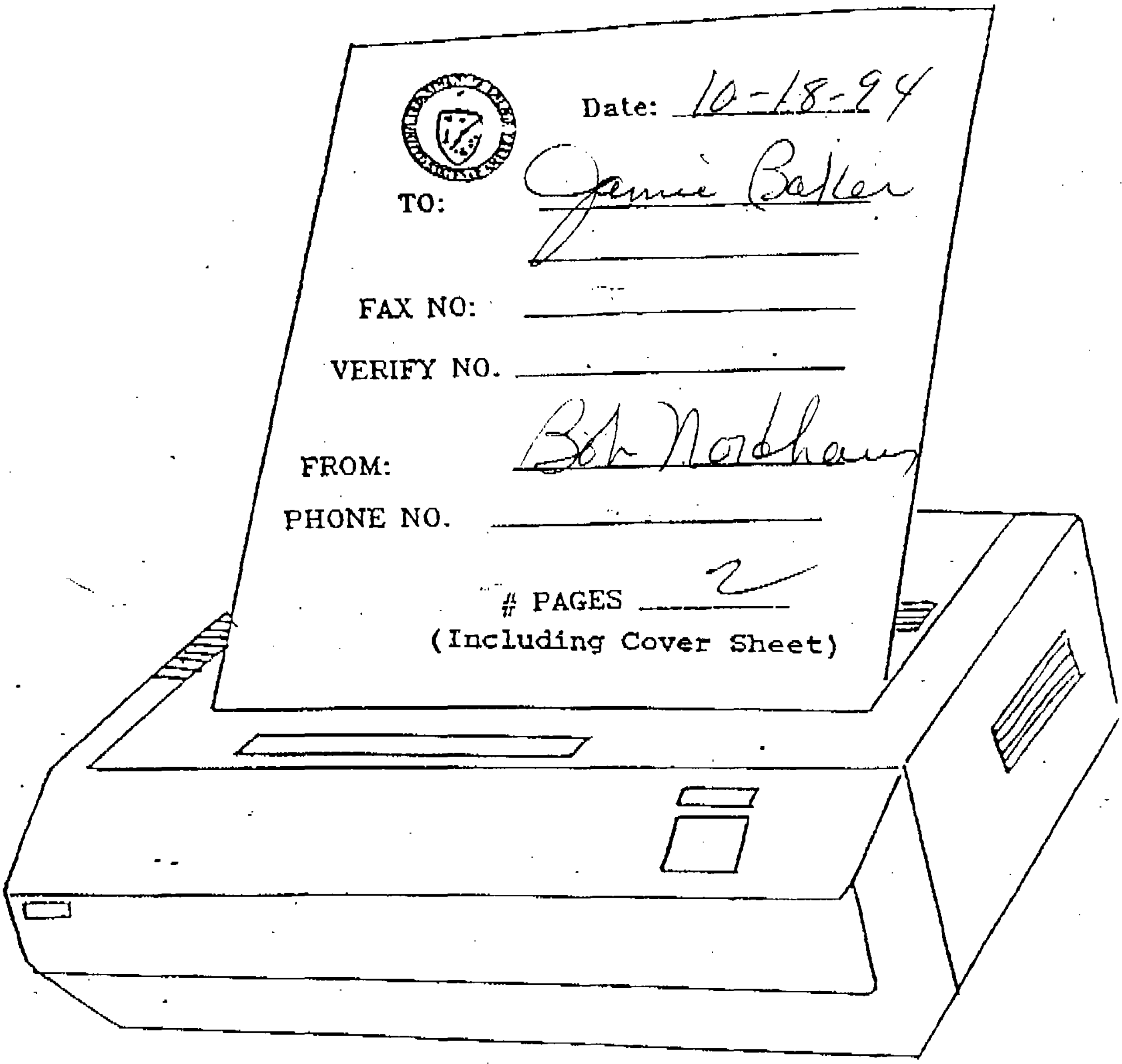
OFFICE OF THE GENERAL COUNSEL

U.S. DEPARTMENT OF ENERGY

WASHINGTON, D.C.

FAX #:
COML:



REMARKS:

ATTORNEY-CLIENT PRIVILEGED FOR OFFICIAL USE ONLY

Alternative Energy Capability Funding

Question Presented

What legal authorities are available to provide 50,000 metric tons of fossil fuel (heavy oil or coal) on an immediate basis to North Korea, in the event such an undertaking were to become an element of an agreement between the United States and the DPRK. The cost of such an undertaking is estimated at $5-10 million.

This issue was first raised during the negotiations occurring the week of October 10. We further understand that this possible term of agreement has not been approved or endorsed by policy makers, but may be agreed to by negotiators ad referendum. This paper does not address the related question of legal authority to provide 500,000 metric tons of fossil fuel to the DPRK over the next ten years.

Conclusion

DOE, State and DOD have available legal authorities that could be used to fund an initial installment of fossil fuel, assuming the availability of appropriated funds. However, depending on which agency is ultimately designated to provide long-term assistance, should policy makers determine to do so, additional ~~authorization~~ authorization and appropriations from Congress will be required. Therefore, we could not now legally commit to a package that included both elements. In addition, ~~State and DOD~~ counsel for all three agencies remain concerned that use of their ~~agency~~ authorities in this context could be challenged on the Hill.

Summary of Authorities

a. DOE Funds:*

SEE ALTERNATIVE LANGUAGE

If directly tied to the objective of nuclear non-proliferation, DOE has authority to acquire and purchase real property and to sell, lease or grant that same real property. In addition, DOE has authority to "without regard to . . . any other law, . . . make such disposition [of surplus materials] as it may deem desirable of . . . (2) any other property, the special disposition of which is, in the opinion of the Commission [the

* It appears that the broad restriction of section 620(t) of the FAA, which currently prohibits all assistance under this or any other act with respect to countries with whom the U.S. has severed diplomatic relations, can be interpreted as not applying to the country in question with which the U.S. has never established such relations. If this provision were applicable, it would be necessary to establish such relations before using Defense funds too provide assistance.

DRAFT

DOE FUNDS:

DOE has authority under the Atomic Energy Act (AEA), as amended, to acquire and dispose of personal property in the proper performance of functions set forth elsewhere in the Act and in keeping with the purposes and policies which the Act prescribes. Specifically, under section 161(g), DOE has authority to acquire, purchase and lease personal property and to sell, lease or grant that same personal property. In addition, under section 161(j), DOE has authority to "make such disposition as it may deem desirable of (1) radioactive materials, and (2) any other property, the special disposition of which is, in the opinion of the Commission [the Secretary] in the interest of the national security."

Section 3, the "purpose" provision of the AEA, clearly demonstrates that among the primary functions and purposes of the DOE under the AEA are peaceful international energy cooperation and nuclear nonproliferation. For example, section 3.c. provides that it is the purpose of the AEA to provide for:

> a program for Government control of the possession, use and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons.

Section 122 of the AEA further authorizes the Secretary of Energy "to give maximum effect to the policies contained in any international arrangement ~~make~~ made after ... enactment [of the AEA]." (1954).

The FY 1995 DOE appropriation contains $__________ million~~/billion~~ that may be available for this nuclear nonproliferation purpose.

Jamie — new version of last DOE paragraph on p. 2. RL

DOE has identified at least $5 million in its 1995 appropriations that is available under AEA authority for this nuclear nonproliferation purpose. However, expending funds for this initiative without going through the Department's customary reprogramming notification procedures would, in the Department's view, trigger new statutory restrictions which would sharply curtail the Department's current ability to use appropriated funds.

Under DOE's current informal procedures, DOE would send a letter ~~[illegible]~~ to the 4 committees and subcommittees ~~[illegible]~~.

omit written notification

notify staffs some 7 days.

much bigger pot

$76 mill.

$322 mill.

mil

Verification and control technology appropriation.

⇒ 342

SJS arms control 76 mill.

approving the reprogramming before proceeding

avoid spirit of the process.

~~Secretary], in the interest of the national security." AEA Sections 161(i) and (j). The FY 1995 DOE appropriations contain $__ million/billion authorized for spending on these purposes.~~

~~Sections 121 and 122 of the Atomic Energy Act authorize Energy to give broad effect to the policies contained in treaties made after 1954. Further, any provision of the Act that conflicts with the provisions of such a treaty "shall be deemed to be of no force or effect." Finally, use of this authority would be consistent with one of the purposes of the Act provided in Section 3.c. ". . . to make the maximum contributions to the common defense and security and national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons."~~

b. State Funds:

(1) Economic Support Funds (ESF) appropriated under the Foreign Operations Appropriations Act (Foreign Ops Act)) -- funds could only be made available pursuant to a special waiver authority (e.g., sec. 614 (largest annual ceiling), or sec. 451 of the FAA) waiving foreign aid prohibitions applicable to the country. These include prohibitions on direct and indirect assistance to the country using foreign operations appropriations, and on any assistance authorized by the FAA on account of a country being designated a terrorist or communist state/government. If insufficient funds are available in the ESF account, the FAA transfer authority (sec. 610 of the FAA) may be invoked by the President to transfer funds into that account. . The majority of ESF moneys are fenced off and may not be used for other purposes. We understand that approximately $330 million is "available."

Significant political problems could be encountered on the Hill during informal and formal consultations, particularly with regard to the use of foreign operations funds, since the Congress imposed an explicit ban this year on the use of such funds for the country at issue.

(2) Nonproliferation and Disarmament Fund (NDF) -- $10M appropriated for FY 95 in the Foreign Ops Act, subject to a "notwithstanding" authority but also to the regular (15 day) notification procedures. The theory for using this fund is that the provision of alternative energy sources furthers disarmament and nonproliferation objectives of the initiative.

c. DOD Funds:

(1) CINC Initiative Fund -- 10 U.S.C. 166(a) -- authorizes use of funds for "contingencies"; $25M appropriated for this account

LEGAL
10/14/94 ID:

OCT 14'94 13:56 No.003 P.01

OPTIONAL FORM 99 (7-90) 10-14

FAX TRANSMITTAL # of pages ▶ 1

To Jamie Baker	From Jeff Kovar
Dept./Agency NSC/L	Phone # 647-3044
Fax # 456-9110	Fax # 736-7559

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

FAX TRANSMITTAL COVER SHEET

DATE:	
TO: Kovar	FROM: Baker
PHONE NO.:	PHONE NO.: (202)456-9111
FAX NO.: 736-7559	FAX NO.: (202)456-9110

COMMENTS:

Jami — I agree not legally binding. Word "will" is missing from last sentence — after "Government." Phrase "implement the policies" seems unnecessarily weak — why not "carry out the actions"?

Jeff

NUMBER OF PAGES (including cover page):

[redacted] OPTIONAL FORM 99 (7-90)

10-11-94

OCT 11 '94 15:42 NO.006 P.01

No. 93

FAX TRANSMITTAL | # of pages ▸ 8

To Jamie Baker	From Jeff Kovar
Dept./Agency	Phone # 647-3044
Fax # 456-9110	Fax # 736-7559

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

COPY

UNCLASSIFIED

TO: P - Mr. Tarnoff

FROM: L - Conrad K. Harper

SUBJECT: Restrictions on Relations with North Korea

Your office has asked that we provide a summary of current restrictions on political and economic relations with the Democratic People's Republic of North Korea (DPRK). A list is at Tab 1.

U.S. restrictions on relations with the DPRK span a broad continuum, from refusal to engage in diplomatic relations to a sweeping trade embargo under the Trading With the Enemy Act ("TWEA"). Significantly, in addition to restrictions applicable to the DPRK by name, it is also subject to other, more general sanctions on account of its weapons proliferation and terrorist-related activities (e.g., it has been designated a "terrorist country" by the U.S. since 1988). Moreover, it is also potentially subject to a wide range of additional restrictions on security and other assistance (including International Financial Institution lending) for human rights reasons and because it remains a communist dictatorship.

While many of the current U.S. restrictions on the DPRK may, as a legal matter, be terminated or relaxed by the executive branch in the exercise of its own discretion without legislation or the need to consult Congress (e.g., the establishment of diplomatic relations, lifting of the 25-mile limit on travel by DPRK representatives to the UN, the trade embargo), the administration's freedom of movement is circumscribed by a complex web of potentially applicable legislation. Moreover, any such effort would receive the closest scrutiny--and possible resistance--from Congress. Congress' strong anti-DPRK bias is illustrated in section 710 of the pending State authorization legislation (proposed by Senator Robb out of concern about the DPRK's nuclear activities), which would, if enacted, diminish the President's authority to lift/relax the TWEA trade embargo (at Tab 2).

Attachments:

Tab 1 - Compilation of Political and Economic Restrictions on the DPRK

2 - Robb Proposal

NORTH KOREA SANCTIONS

Category [Legal Citation]	Description	Repeal/Revise
1. **Diplomatic Relations.** [U.S. Constitution; Note: For a good, general overview of the law regarding state/government recognition, see sections 202-205 of the Restatement 3d, Foreign Relations Law of the U.S. (1986.)]	The U.S. does not currently maintain diplomatic relations with the DPRK.	The establishment of diplomatic relations is a constitutional prerogative of the Executive; no formal congressional approval is required.
2. **U.N. 25-mile Travel Limit.** [Section 162 of the Foreign Missions Act, 22 U.S.C. 4316; U.N. Headquarters Agreement; Immigration and Nationality Act]	Although the DPRK is a member of the United Nations, the U.S. lawfully restricts the travel of DPRK UN representatives to the HQ District, i.e., a 25-mile radius from Columbus Circle.	The 25-mile limit may be removed or relaxed by the Secretary (in consultation with the FBI and CIA) without the need for congressional approval or consultation.
3. **Trade Embargo.** [Trading With The Enemy Act ("TWEA"), Pub. L. 65-91, as amended, 50 U.S.C. App. 5(b); 31 C.F.R. 500.201 et seq.]	--Empowers President to prohibit/regulate a broad range of financial/property transactions. --Since 12/17/50, President has banned trade absent Treasury (Office of Foreign Asset Controls) license.	Executive may relax or terminate the ban at any time w/o congressional consent or consultation. [But note section 710 of the pending State authorization bill, which, if enacted in its current form, would prohibit any license for trade with the DPRK except pursuant to a presidential determination that the DPRK maintains its status as a member of the 1968 Nuclear Nonproliferation Treaty and is in full compliance with its obligations thereunder.]

4. **Exports.** [Export Administration Act of 1979 (Pub. L. 96-72, as amended, 50 U.S.C. App. 2404)("EAA"); 15 C.F.R. Part 700]	Authorizes the President to "prohibit or curtail the export of any goods or technology subject to the jurisdiction of the [U.S.]" absent a license from Commerce.	Executive branch may relax or terminate the ban without congressional consent or consultation.
5. **Shipping.** [Section 704 of the Defense Production Act of 1950 (Pub. L. 81-774, 50 U.S.C. App. 2154); 44 C.F.R. Part 403]	Prohibits owners, owners' agents, and officers from (i) taking to the DPRK any ship or aircraft documented or registered under the laws of the U.S.; and, (ii) from transporting in any such ship goods destined for the DPRK.	Executive may relax or terminate these restrictions without congressional consent or consultation.
6. **Most Favored Nation ("MFN").** [Title IV of the Trade Act of 1974 (Pub. L. 93-618, 19 U.S.C. 1431)]	As a country the products of which were not eligible for MFN treatment on or before 1/3/75, the DPRK is ineligible for MFN extension, absent...	(i) Presidential determination that the DPRK (as a "non-market country") allows its nationals to emigrate freely (the so-called "Jackson-Vanik" amendment); and, (ii) conclusion of a bilateral trade agreement containing specified provisions.
7. **Proliferation** [Sections 1701-1704 of the FY '91 National Defense Authorization Act (Pub. L. 101-510, 50 U.S.C. App. 2402 note); 15 C.F.R. Part 700; 22 C.F.R. 120.29 (ITAR), see 58 F. Reg. 39286 (7/22/93)]	-- Amended the Arms Export Control Act (22 U.S.C. 2778) and the Export Administration Act to require sanctions if the President	-- Sanctions are for a two-year period. -- President may waive upon a determination that such action is

	determines that a foreign person knowingly exports, transfers or otherwise engages in trade "of items that contribute to missile proliferation." -- U.S. imposed such sanctions on two DPRK entities in 1992.	"essential to the national security of the [U.S.]" and so certifies to Congress 20 days prior to issuing the waiver.
8. **Terrorism.** [Section 6(j) of the Export Administration Act of 1979, as amended by the Anti-Terrorism and Arms Export Amendments Act of 1989, Pub. L. 101-222, 103 Stat. 1892] [<u>Note</u>: Section 901 of the Internal Revenue Code, 26 U.S.C. 901(j) would also deny in the case of the DPRK certain tax credits for income and other taxes paid to that country.]	-- DPRK designated a "terrorist country" since 1/20/88 per State determination that it had repeatedly provided support for acts of international terrorism. -- Prohibits certain transactions with DPRK, including direct or indirect export of any munitions list items by USG or any US person (as well as to re-exports by non-U.S. persons). -- Exports of non-munitions list items must be licensed.	-- President may waive the prohibition for a particular transaction if he determines that it is "essential to the national security interests of the [U.S.]," and both consults with and submits a report to Congress 15 days prior to the transaction. -- There are two ways by which a country may get off the "terrorist list," i.e., (i) President certifies to Congress that "there has been a fundamental change in the leadership or policies of the terrorist country, that the government ...is not supporting acts of international terrorism, and that the government has provided assurances that it will not support acts of international terrorism in the future,"; or, (ii) President submits to Congress for review, 45 days prior to the

		effective date of the recision, a determination that the government has not supported international terrorism during the preceding 6-month period and has provided assurances that it will not support acts of international terrorism in the future.

THE FOLLOWING ARE POTENTIALLY APPLICABLE ALTHOUGH NO FORMAL DETERMINATION HAS YET BEEN MADE

9. **Foreign Assistance.** A. **Human Rights.** [Section 116 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151n; also covers OPIC insurance, guarantees, or loans, 22 U.S.C. 2199 (i)]	Prohibits assistance to the government of "any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment..." etc.	"Gross violator" determination is made by the AID Administrator and the Assistant Secretary for HA, who must take into account the extent to which the government has permitted unimpeded investigations of alleged human rights violations by appropriate international organizations, and the extent to which multilateral and security assistance is already restricted to that country by the President or Congress for human rights reasons.
B. **Communist States.** [Section 620(f) of the FAA (22 U.S.C. 2370 (f))]	Prohibits assistance to "any communist country," including the DPRK, except for	--President may waive upon finding that such assistance is vital to U.S. national security,

[Note: There are also several other restrictions on assistance that might potentially become applicable to the DPRK that it is not necessary to address now, e.g., sec. 620A of the FAA, 22 U.S.C. 2371 (prohibits assistance to governments supporting int'l terrorism); sec. 620(t) of the FAA (break in diplomatic relations); secs. 523 and 529 of the FY 94 Foreign Ops. Appropriation bill; sec. 543 of the FY '93 FAA (Pub. L. 102-391).]

assistance to schools, libraries, and hospital centers for educational research which are outside the U.S. and are founded/operated by U.S. citizens.

that the country is not controlled by the international communist conspiracy, and that the assistance will promote the country's independence from international communism.

-- President may also remove a country for a designated period if he determines that it is in the national interest to do so; one factor to be considered is whether the country is "fostering the establishment of a generally democratic system, with respect for internationally recognized human rights."

10. **Security Assistance.**

[Section 502B of the FAA (22 U.S.C. 2304)]

-- Prohibits security assistance to any country "the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."

-- Also prohibits security assistance for the police, domestic intelligence, or similar law enforcement forces of such a country. Moreover, export licenses are prohibited even for crime control and detection instruments and equipment, subject to a presidential waiver in

Assistance may be provided only if the President finds such a "significant improvement in [the] human rights record" that it is in the national interest to lift the prohibition.

	"exceptional circumstances." Id., for IMET.	
11. **IFI Lending.** [Section 7001 of the International Financial Institutions Act (22 U.S.C. 262d); see also sec. 528 of the FY '94 Foreign Ops Appropriation Act, which contains a similar provision.]	Requires the U.S. Executive Directors of IFI's (e.g., World Bank) to oppose any loan, extension of financial assistance, or technical assistance to any country the government of which engages in "a pattern of gross violations of internationally recognized human rights," or "provides refuge to individuals committing acts of international terrorism by hijacking aircraft." -- U.S. Executive Directors are only authorized to support assistance "directed specifically to programs which serve the basic human needs of the citizens of such country."	Note: 22 U.S.C. 262d(f) requires Treasury to consult "in a timely manner" with relevant congressional committees to inform them of "prospective changes in policy direction toward counties [sic] which have or recently have had poor human rights records." 22 U.S.C. 262d(c) requires Treasury to report quarterly on all loans considered by the IFI Boards, addressing *inter alia* whether the U.S. opposed, in each instance, assistance on human rights grounds, or changed its voting position for such reasons.
"Gramm Amendment," section 43 of the Bretton Woods Agreement Act, as amended, 22 U.S.C. 286aa.	Requires the Secretary of Treasury to direct the U.S. Executive Director of the IMF	The congressional committees may request that the Secretary of Treasury appear before them to

	"to actively oppose any facility involving use of Fund credit by any Communist dictatorship" unless Treasury certifies to the relevant congressional committees that certain economic criteria are met.	certify and document (or to document in writing) that the requisite conditions have been met. If the Secretary does not appear in response to Congress' invitation, the Executive Director "shall vote against such program."
Gonzalez Amendment, 22 U.S.C. 283r, 284j, 285o.	Requires Secretary of Treasury to instruct Executive Directors to the IBRD and ADB to vote against assistance to any country that has expropriated the property of U.S. nationals.	Unless President determines that (i) an arrangement for proper compensation has been made; (ii) the matter has been submitted to arbitration; or, (iii) good faith settlement negotiations are in progress.

NSC/RMO PROFILE

RECORD ID: 9420046
RECEIVED: 12 JAN 94 10

TO: LAKE

FROM: GROSSMAN, M

DOC DATE: 14 JAN 94
SOURCE REF:

KEYWORDS: KOREA NORTH DC
AGENDA

PERSONS:

SUBJECT: ADDL PAPER FM 19 JAN DC MTG ON NORTH KOREA

ACTION: ADD-ON / APPROPRIATE ACTION DUE DATE: 15 JAN 94 STATUS: S

STAFF OFFICER: AOKI LOGREF:

FILES: IFM NSCP: CODES:

D O C U M E N T   D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
AOKI		BERGER
		DARBY
		KRECZKO
		PONEMAN
		SODERBERG
		WRIGHT

COMMENTS:

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9400968

United States Department of State

Washington, D.C. 20520

January 14, 1994

20046

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(DECL:OADR)

TO: Distribution

FROM: State/PM - Robert Einhorn

SUBJECT: January 19 DC Meeting on North Korea

Attached is an additional paper for the DC meeting on North Korea scehduled for January 19th. Please provide comments no later than noon Tuesday to Joel Wit, State/PM (202-736-7421).

DECLASSIFIED E.O. 13526
Department of State Guidelines,
September 11, 2006
By (W) NARA, Date 03/24/15
2009-0528-F

~~SECRET/PLUTO~~

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
007. paper	re Next Steps (7 pages)	01/14/1994	P1/b(1)

COLLECTION:
Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:
North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
008. memo	Walt Slocombe to Dan Pozeman re Operations Team Spirit 94 (2 pages)	10/07/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Mary Derosa (Legal Advisor)
OA/Box Number: 3500

FOLDER TITLE:

North Korea [5]

2009-0528-F
kc1448

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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Cross References

Adverse personnel actions against government employees, see section 7501 et seq. of Title 5, Government Organization and Employees.

§ 1519. Criminal penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1517(a) of this title shall be fined not more than $5,000, imprisoned for not more [illegible] years, or both.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 932.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1519	31:665(i)(1) (words after semicolon related to (h)).	R.S. § 3679(i)(1) (words after semicolon related to (h)); Mar. 3, 1905, ch. 1484, § 4 (1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 768.

Explanatory Notes

The words "District of Columbia government" are added because of section 9 of the Act of June 26, 1912 (ch. 182, 37 Stat. 184).

West's Federal Forms

Sentence and fine, see § 7531 et seq.

Library References

United States ⚷52. C.J.S. United States §§ 60, 61.

SUBCHAPTER III—TRANSFERS AND REIMBURSEMENTS

§ 1531. Transfers of functions and activities

(a) The balance of an appropriation available and necessary to finance or discharge a function or activity transferred or assigned under law within an executive agency or from one executive agency to another may be transferred [illegible] and used—

(1) by the organizational unit or agency to which the function or activity was transferred or assigned; and

(2) for a purpose for which the appropriation was originally available.

(b) The head of the executive agency determines the amount that, with the approval of the President, is necessary to be transferred when the transfer or assignment of the function or activity is within the agency. The President determines the amount necessary to be transferred when the transfer or assignment of the function or activity is from one executive agency to another.

(c) A balance transferred under this section is—

(1) credited to an applicable existing or new appropriation account;

(2) merged with the amount in an account to which the balance is credited; and

(3) with the amount with which the balance is merged, accounted for as one amount.

(d) New appropriation accounts may be established to carry out subsection (c)(1) of this section.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 932.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1531(a), (b)	31:581c(a) (1st sentence), (b) (1st sentence)	Sept. 12, 1950, ch. 946, § 202, 64 Stat. 838.
1531(c), (d)	31:581c(a) (last sentence), (b) (last sentence).	

Explanatory Notes

In subsections (a) and (b), the defined term "executive agency" in section 102 of the revised title [section 102 of this title] is substituted for "department or establishment" for consistency and clarity.

In subsection (a), the words "organizational unit or agency" are substituted for "agency", and the word "appropriation" is substituted for "said funds", for consistency and clarity.

Subsection (d) is substituted for "which are hereby authorized to be established" because of the restatement.

Oil Policy Committee. Section 6 of Ex.Ord.No. 11703, Feb. 7, 1973, 38 F.R. 3579, set out as a note under section 1862 of Title 19, Customs Duties, provides for the transfer of appropriations, allocations, personnel, etc., from the Director of the Office of Emergency Preparedness to the Chairman of the Oil Policy Committee respecting the oil import control program.

Transfer of Appropriations. Section 4 of Ex.Ord.No. 10579, Nov. 30, 1954, 19 F.R. 7925, set out as a note under section 486 of Title 40, Public Buildings, Property, and Works, provides for the transfer of appropriations by the Director of the Bureau of the Budget [now Office of Management and Budget] to the Administrator of General Services for the purpose of interagency motor-vehicle pools and systems.

Notes of Decisions

1. Construction with other laws

Authority under this section to merge funds with similar funds in otherwise proper cases does not constitute authority to merge funds available for salaries expenses of the Defense Materials Procurement Agency for the service of a fiscal year with those made available until expended in view of section 2161 of the Appendix to Title 50, which restricts the availability of funds allocated or transferred to the period specified in the Acts making such funds available. 31 Comp.Gen. 342 (1952).

§ 1532. Withdrawal and credit

An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1532	31:628–1	Sept. 6, 1950, ch. 896, § 1210 (less last proviso), 64 Stat. 765.

Explanatory Notes

The word "limitations" is substituted for "limitations, conditions, and restrictions" to eliminate unnecessary words.

§ 1533. Transfers of appropriations for salaries and expenses to carry out national defense responsibilities

An appropriation of an executive agency for salaries and expenses is available to carry out national defense responsibilities assigned to the agency under law. A transfer necessary to carry out this section may be made between appropriations or allocations within the executive agency. An allocation may not be made to an executive agency that can carry out with its regular personnel a defense activity assigned to it by using the authority of this section to realign its regular programs.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1533	31:697	June 2, 1951, ch. 121, ch. XI (proviso immediately before heading "Independent Offices"), 65 Stat. 61.

Explanatory Notes

The words "executive agency" are substituted for "department, agency, or corporation, in the executive branch of the Government" because of section 102 of the revised title [section 102 of this title]. The words "authority of this section" are substituted for "foregoing authority" for clarity.

§ 1534. Adjustments between appropriations

(a) An appropriation available to an agency may be charged at any time during a fiscal year for the benefit of another appropriation available to the agency to pay costs—

(1) when amounts are available in both the appropriation to be charged and the appropriation to be benefited; and

(2) subject to limitations applicable to the appropriations.

(b) Amounts paid under this section are charged on a final basis during, or as of the close of, the fiscal year to the appropriation benefited. The appropriation charged under subsection (a) of this section shall be appropriately credited.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1534(a)	31:628a (1st sentence)	June 29, 1966, Pub.L. 89–473, § 1, 80 Stat. 221.
1534(b)	31:628a (last sentence)	

Explanatory Notes

In subsection (a), the words "Subject to limitations applicable with respect to each appropriation concerned" are omitted as surplus. The words "or any bureau or office thereof" are omitted as being included in "agency". The words "to pay costs" are substituted for "for the purpose of financing the procurement of materials and services, or financing other costs" to eliminate unnecessary words.

In subsection (b), the words "amounts paid under this section" are substituted for "such expenses so financed", and the words "appropriations charged under subsection (a) of this section" are substituted for "financing appropriation", for clarity.

Library References

United States ⚷85.

C.J.S. United States § 123.

§ 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.

(b) Notwithstanding subsection (a)(3) of this section, the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration may place orders under this section for goods and services that an agency or unit filling the order may be able to provide or procure by contract.

(c) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in—

(1) providing goods or services; or

(2) making an authorized contract with another person to provide the requested goods or services.

(e) This section does not—

(1) authorize orders to be placed for goods or services to be provided by convict labor; or

(2) affect other laws about working funds.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 933.)

Amendment of Predecessor Provisions After April 15, 1982, As Superseding This Section

Section 4(a) of Pub.L. 97–258 provided in part that: "Laws enacted after April 15, 1982, that are inconsistent with this Act [which revised, codified, and enacted this title into positive law] supersede this Act to the extent of the inconsistency."

Pub.L. 97–332, Oct. 15, 1982, 96 Stat. 1622, amended the predecessor provision of this section [section 7(a) of Act May 21, 1920, c. 194, 41 Stat. 613] by substituting language authorizing the placing of orders for goods and services from agencies "in a position or equipped to supply, render or obtain [those goods or services] by contract" for former provisions authorizing the placing of orders for goods and services only from agencies "in a position to supply or equipped to render [the goods and services]", struck out provisions authorizing the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration to place orders under this section for goods and services that an agency or unit filling the order may be able to provide or procure by contract, substituted provisions authorizing the letting of work by contract if the work or services could be as conveniently or more cheaply performed by private agencies for provisions formerly requiring that such work be let by competitive bids, and added provision that any condition or limitation applicable to the procurement funds of any executive department, independent establishment, bureau, or *office which places an order or lets a contract under the provisions of this section be applied in placing such order or letting such contract.*

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1535(a)	31:686(a) (1st sentence words before 15th comma, last proviso).	Mar. 4, 1915, ch. 143, § 1 (3d proviso on p. 1084), 38 Stat. 1084; May 21, 1920, ch. 194, § 7(a), 41 Stat. 613; June 30, 1932, ch. 314, § 601, 47 Stat. 417; restated July 20, 1942, ch. 507, 56 Stat. 661; Aug. 23, 1958, Pub.L. 85–726, § 1407, 72 Stat. 808; Aug. 6, 1981, Pub.L. 97–31, § 12(11), 95 Stat. 154; Dec. 29, 1981, Pub.L. 97–136, § 11, 95 Stat. 1707.
1535(b)	31:686(a) (1st sentence 1st proviso)	
1535(c)	31:686(a) (1st sentence words between 15th comma and 1st proviso, last sentence).	
1535(d)	31:686(c)	May 21, 1920, ch. 194, § 7(c), 41 Stat. 613; June 30, 1932, ch. 314, § 601, 47 Stat. 417; restated June 26, 1943, ch. 150, § 1, 57 Stat. 219.
	31:686–1	Sept. 6, 1950, ch. 896, § 1210 (last proviso), 64 Stat. 765.
1535(e)(1)	31:686b(a), (b)	June 30, 1932, ch. 314, § 602(a), (b), (c) (related to § 602), 47 Stat. 418.
1535(e)(2)	31:686b(c) (related to 31:686, 686b)	

Explanatory Notes

In the section, the word "agency" is substituted for "executive department or independent establishment of the Government" for clarity. See 12 Comp.Gen. 442 (1932) and United States v. Mitchell, 425 F.Supp. 917 (D.D.C.1976). The words "major organizational unit" or "unit" are substituted for "bureau or office" for consistency in the revised title. The words "to fill the order" or "filling the order" are substituted for "such requisitioned" and "as may be requisitioned" for clarity and because of the restatement. The words "goods or services" are substituted for "materials, supplies, equipment, work, or services" to eliminate unnecessary words.

In subsection (a)(4), the words "the head of the agency decides" are added, and the words "commercial enterprise" are substituted for "private agencies", for clarity. The words "by competitive bids" are omitted as surplus because of various procurement laws.

In subsection (b), the words "The Secretary of Defense" are added for clarity because of Comptroller General decision B-20179 (Apr. 1, 1981). The words "a military department of the Department of Defense" are substituted for "the Department of the Army, Navy Department" for consistency with title 10 [Title 10, Armed Forces] and to apply the source provisions to the Department of the Air Force because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488) [which enacted Title 10, Armed Forces]. The words "Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard" are substituted for "Federal Aviation Agency, Coast Guard" to reflect the transfer of those functions to the Secretary of Transportation. The words "the Administrator of General Services" are added to reflect the transfer of the functions of the Bureau of Federal Supply of the Treasury Department to the Administrator by section 102(a) of the Act of June 30, 1949 (40:752(a)) [section 752(a) of Title 40, Public Buildings, Property, and Works]. The words "the Administrator of" are added before "Maritime Administration" for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (c), the words "pursuant to such order" are omitted as unnecessary.

Subsection (d) is substituted for the source provisions being restated to reflect decisions of the Comptroller General, including 31 Comp.Gen. 83 (1951), 34 Comp.Gen. 418 (1955), 39 Comp.Gen. 31[illegible], and 55 Comp.Gen. 1497 (1976).

In subsection (e), the words "any Government department or independent establishment, or any bureau or office thereof ... "except as otherwise provided by law" are omitted as unnecessary because of the restate- ... The text of 31:686b(a) [former section 686b(a) of this title] is omitted as executed.

Cross References

Agreements for transfer of persons serving in active military, naval, or air service to Veterans' Administration facility for treatment and rehabilitation for alcohol or drug dependence or abuse disabilities, see section 620A of Title 38, Veterans' Benefits.

Availability of reimbursements made to appropriations of Department of Defense under this section, see section 2205 of Title 10, Armed Forces.

Expenditure of amounts paid under this section in providing goods or services or for purpose specified, see section 1536 of this title.

Orders or contracts for materials placed with government-owned establishments deemed obligations, ... of Title 41, Public Contracts.

Placing of orders by Federal Energy Regulatory Commission with other departments for engraving, etc., see section 825k of Title 16, Conservation.

Notes of Decisions

1. Rules and regulations

General Regulations of the General Accounting Office, which prescribed administrative procedure for adjustments between appropriations and/or funds "for general use through the government service", were held to be invalid because in conflict with provisions of former section 686 of this title. 1934, 37 Opp.Atty.Gen. 559.

2. Agreements between court and Archivist

It appeared that former section 686 of this title permitted the court and the Archivist of the United States to enter into an agreement to assure that copies of high quality were produced relatively quickly, at a reasonable cost, and in sufficient quantity. United States v. Mitchell, D.C.D.C.1976, 425 F.Supp. 917.

3. Loans

Loans of supplies, equipment, and materials may have been made on a non-reimbursed basis if for a temporary period and the borrowing agency agreed to assume costs incurred from the loan, but potentially permanent transfers must have been made on a reimbursable basis to comply with former section 686(a) of this title. 1980, 59 Comp.Gen. 366.

Former section 686 of this title applied only ... and not to loans, ... did not authorize loan of Army equipment to officers of Department of Justice. U. S. v. Banks, D.C.S.D.1974, 383 F.Supp. 368.

Sale and loan of government equipment to Department of Justice to be used in executing laws was not authorized by regulation promulgated under sections 331 to 333 of Title 10, dealing with issuance of presidential proclamation as basis for federal troop intervention in civil law enforcement where no presidential proclamation was involved in case which arose out of Wounded Knee occupation. Id.

4. Obligations of agencies or units

Regardless of whether or not Bureau of Alcohol, Tobacco and Firearms duly places order for strip stamps with Bureau of Engraving, it may obligate annual appropriations at end of fiscal year only to extent that stamps are printed or are in process, or if a contract has been entered into with a third party to provide the stamps. 1980, 59 Comp.Gen. 602.

5. Pro rata interests of agencies

A facility constructed by one agency for the use of several agencies under the authority in former section 686 of this title was considered the property of all the agencies on a pro rata basis and none of the agencies could have limited, restricted, reduced, abridged, or encumbered in any manner the pro rata interests of the others. 38 Comp.Gen. 36 (1958).

6. Resale or interdepartmental transfer

Former section 686 of this title was directed to assuring that bookkeeping adjustment of respective appropriation accounts reflected the full "actual cost" when goods or services were requisitioned from one agency by an order of another agency, and did not alter the basic character of the requisitional order as an interdepartmental transaction between agencies of the United States government, and thus did not support contention that transfer of natural gas from the Army to Defense Family Housing was a resale for pur[illegible] jurisdiction of the Federal Energy Regulatory Commission rather than merely an interdepartmental transfer. Alexander v. Federal Energy Regulatory Commission, 1979, 609 F.2d 543, 197 U.S.App.D.C. 288.

7. Services

Former section 686(a) of this title did not require that all interdepartmental loans of employees be made on reimbursable basis; contrarily, such loans of services should have been reimbursed only where so provided by prior written agreement between the agencies involved. 1980, 59 Comp.Gen. 366.

Services rendered by government employees as members of security hearing boards established in accordance with Ex.Ord.No. 10450, Apr. 27, 1953, 18 F.R. 2489, set out under section 7311 of Title 5, were not within the contemplation of former section 686 of this title and therefore the appropriations of the agencies for which the hearings were held were not available for reimbursing the appropriations of the agencies furnishing the hearing board members. 32 Comp.Gen. 534 (1953).

8. Supervision or [illegible]es

Inasmuch as a Military Interdepartmental Procurement Request is considered placed pursu[illegible] Corps of Engineers is otherwise authorized to recover supervision and administrative expenses incurred in performing such a request for the Air Force, the Corps should be reimbursed from appropriations current when the costs were incurred or when the Corps entered into a contract with a third party to execute the request. 1980, 59 Comp.Gen. 563.

§ 1536. Crediting payments from purchases between executive agencies

(a) An advance payment made on an order under section 1535 of this title is credited to a special working fund that the Secretary of the Treasury considers necessary to be established. Except as provided in this section, any other payment is credited to the appropriation or fund against which charges were made to fill the order.

(b) An amount paid under section 1535 of this title may be expended in providing goods or services or for a purpose specified for the appropriation or fund credited. Where goods are provided from stocks on hand, the amount received in payment is credited so as to be available to replace the goods unless—

(1) another law authorizes the amount to be credited to some other appropriation or fund; or

(2) the head of the executive agency filling the order decides that replacement is not necessary, in which case, the amount received is deposited in the Treasury as miscellaneous receipts.

(c) This section does not affect other laws about working funds.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 934.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1536(a)	31:686(b) (1st, 2d sentences)	May 21, 1920, ch. 194, § 7(b), 41 Stat. 613; restated June 30, 1932, ch. 314, § 601, 47 Stat. 418.
1536(b)	31:686(b) (3d, last sentences)	
1536(c)	31:686b(c) (related to 31:686)	June 30, 1932, ch. 314, § 602(c) (related to § 601), 47 Stat. 418.

Explanatory Notes

In subsection (b), the words "providing goods or services" are substituted for "furnishing the materials, supplies, or equipment, or in performing the work or services" to eliminate unnecessary words.

Cross References

Availability of reimbursements made to appropriations of Department of Defense under this section, see section 2205 of Title 10, Armed Forces.

Orders or contracts for materials placed with government-owned establishments deemed obligations, see section 23 of Title 41, Public Contracts.

Placing of orders by Federal Energy Regulatory Commission with other departments for engraving, etc., see section 825k of Title 16, Conservation.

§ 1537. Services between the United States Government and the District of Columbia government

(a) To prevent duplication and to promote efficiency and economy, an officer or employee of—

(1) the United States Government may provide services to the District of Columbia government; and

(2) the District of Columbia government may provide services to the United States Government.

(b)(1) Services under this section shall be provided under an agreement—

(A) negotiated by officers and employees of the two governments; and

(B) approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

(2) Each agreement shall provide that the cost of providing the services shall be borne in the way provided in subsection (c) of this section by the government to which the services are provided at rates or charges based on the actual cost of providing the services.

(3) To carry out an agreement made under this subsection, the agreement may provide for the delegation of duties and powers of officers and employees of—

(A) the District of Columbia government to officers and employees of the United States Government; and

(B) the United States Government to officers and employees of the District of Columbia government.

(c) In providing services under an agreement made under subsection (b) of this section—

(1) costs incurred by the United States Government may be paid from appropriations available to the District of Columbia government officer or employee to whom the services were provided; and

(2) costs incurred by the District of Columbia government may be paid from amounts available to the United States Government officer or employee to whom the services were provided.

(B) "Redemption of stamps (Internal Revenue)";

(C) "Refunding legacy taxes, Act of March 30, 1928";

(D) "Repayment of taxes on distilled spirits destroyed by casualty"; and

(E) "Refunds and payments of processing and related taxes".

(b) Disbursements may be made from the appropriation made by this section only for—

(1) refunds to the limit of liability of an individual tax account; and

(2) refunds due from credit provisions of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) enacted before January 1, 1978.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 923.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1324(a)	31:725q–1a (1st par.)	June 19, 1948, ch. 558, § 101 (words before proviso in par. under heading "Bureau of Internal Revenue"), 62 Stat. 561.
1324(b)	31:725q–1a (last par.)	June 19, 1948, ch. 558, 62 Stat. 560, § 302 (last par.); added Sept. 8, 1978, Pub.L. 95–355, § 303, 92 Stat. 563.

Explanatory Notes

In subsection (a), the words "Necessary amounts are appropriated to the Secretary of the Treasury" are added to reflect the introductory language of the Act of June 19, 1948. The words "on and after June 19, 1948" are omitted as executed.

In subsection (b), the words "appropriation made by this section are substituted for "the appropriation to the Treasury Department entitled 'Bureau of Internal Revenue Refunding Internal-Revenue Collections'" to eliminate unnecessary words.

References in Text. Act of March 30, 1928, referred to in subsec. (a)(2)(C), is Act Mar. 30, 1928, c. 302, 45 Stat. 398, which was not classified to the Code.

The Internal Revenue Code of 1954, referred to in subsec. (b)(2), is classified to Title 26, Internal Revenue Code.

Library References

Internal Revenue ⚷4950.

SUBCHAPTER III—LIMITATIONS, EXCEPTIONS, AND PENALTIES

§ 1341. Limitations on expending and obligating amounts

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; or

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 923.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1341(a)	31:665(a), (d)(2) (last sentence related to spending and obligations).	R.S. § 3679(a), (d)(2) (last sentence related to spending and obligations); Mar. 3, 1905, ch. 1484, § 4 (1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765.
1341(b)	31:669 (words after semicolon). . .	Aug. 23, 1912, ch. 350, § 6 (words after semicolon), 37 Stat. 414.

Explanatory Notes

In subsection (b), the words "another amount available for obligation" are substituted for "any other fund" for consistency in the revised title.

Indemnity Contracts Covering International Short-Wave Radio Stations. Contracts for use of international short-wave radio stations and facilities may provide for indemnity of owners and operators of such stations against loss or damage on account of injury to persons or property arising from use of such stations or facilities. Acts July 5, 1946, c. 541, Title I, 60 Stat. 447; July 9, 1947, c. 211, Title I, § 101, 61 Stat. 280; June 3, 1948, c. 400, Title I, § 101, 62 Stat. 312; July 20, 1949, c. 354, Title I, § 101, 63 Stat. 451; Sept. 6, 1950, c. 896, ch. III, Title I, § 101, 64 Stat. 614; Oct. 22, 1951, c. 533, Title I, § 101, 65 Stat. 581; July 10, 1952, c. 651, Title I, § 101, 66 Stat. 554; Aug. 7, 1953, c. 340, Title III, § 301, 67 Stat. 420.

Similar provisions conferring this authority on the Office of the Coordinator of Inter-American Affairs and Office of War Information were carried in Acts Oct. 26, 1942, c. 629, Title II, 56 Stat. 996, 997; July 12, 1943, 3 p.m., E.W.T., c. 228, § 1, 57 Stat. 529, 532; June 28, 1944, c. 301, Title I, § 1, 58 Stat. 538, 539; July 17, 1945, c. 319, § 1, 59 Stat. 477.

Cross References

Administrative discipline for violation of subsec. (a) of this section, see section 1349 of this title.
Contracts for fuel by Secretary of Army without regard to current fiscal year, see section 11a of Title 41, Public Contracts.
Contracts for rent of buildings in District of Columbia not to be made until appropriation, see section 34 of Title 40, Public Buildings, Property, and Works.
Contracts in excess of specific appropriation, penalty for, see section 435 of Title 18, Crimes and Criminal Procedure.
Contracts not to exceed appropriation, see section 12 of Title 41, Public Contracts.
Contracts or purchases prohibited unless authorized or under adequate appropriation, see section 11 of Title 41.
Criminal penalty for violation of subsec. (a) of this section, see section 1350 of this title.
Pay fixed by administrative action, see section 5307 of Title 5, Government Organization and Employees.
Purchases from National Ocean Survey appropriation, see section 878 of Title 33, Navigation and Navigable Waters.
Reports on violations of subsec. (a) of this section, see section 1351 of this title.

United States Commissi and Mexico, auth 277d-3 of Title 2

United States ⟹79.

1. **Construction of**

Former section 66 the public service i special provisions w

United States Commissioner, International Boundary and Water Commission, United States and Mexico, authority to enter into contracts beyond amount appropriated, see section [illegible] of Title 22, Foreign Relations and Intercourse.

Library References

United States ⚷79.

C.J.S. United States § 120.

Notes of Decisions

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1. Construction of section with other laws

Former section 665 of this title applied to the public service in general, and yielded to special provisions which related to a particular department. New York Cent. & H. R. R. v. U. S., 1886, 21 Ct.Cl. 468.

Former section 665 of this title and section 11 of Title 41 were construed together. 1876, 15 Op.Atty.Gen. 124. See, also, 1877, 15 Op. Atty.Gen. 209.

2. Purpose

The object of former section 665 of this title was to prevent executive officers from involving the government in expenditures or liabilities beyond those contemplated and authorized by the law-making power. 1895, 21 Op.Atty.Gen. 248.

3. Policy

It is the settled and recognized policy of Congress to keep all the departments of the government, in the matter of incurring obligations for expenditures, within the appropriations annually made for conducting its affairs. Parshall v. U. S., Mo.1906, 147 F. 433, 77 C.C.A. 457. See, also, Sutton v. U. S., Ct.Cl. 1921, 41 S.Ct. 563, 256 U.S. 575, 65 L.Ed. 1099, 19 A.L.R. 403.

4. Amendment of appropriations Acts

Congress has the power to amend an appropriations Act. Blackhawk Heating & Plumbing Co., Inc. v. U. S., Ct.Cl.1980, 622 F.2d 539.

5. Persons subject to limitations—Generally

Former section 665 of this title restricted in every possible way the expenditures, expenses, and liabilities of the government, so far as executive officers were concerned, to the specific appropriation for each fiscal year. Wilder v. U. S., 1880, 16 Ct.Cl. 528.

Executive officers are prohibited from continuing the employment of contractors and involving the government in expenditures or liabilities beyond those contemplated by Congress, or authorized by law, and if further appropriations are made there must be a new contract for their expenditure. 1895, 21 Op. Atty.Gen. 244.

6. —— Agents or officers of United States

Where War Assets Administration officer, who executed 21-month office building lease with plaintiff, did not have authority to obligate United States credit for period of time in

The fact that an appropriation is exhausted justifies an officer in stopping a contractor's work, but does not constitute a defense in a suit for breach of contract. Ferris v. U. S., 1892, 27 Ct.Cl. 542.

The absence of an appropriation out of which payment can be made is no defense to a valid claim. Winchester & Potomac R. Co. v. U. S., 1892, 27 Ct.Cl. 474. See, also, Simpman's Case, 1883, 18 Ct.Cl. 147.

The absence of an appropriation constitutes no bar to the recovery of a judgment in cases where the liability of the government has been established. Parsons v. U. S., 1879, 15 Ct.Cl. 246.

§ 1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 923.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1342	31:665(b)	R.S. § 3679(b), (d)(2) (last sentence related to voluntary services); Mar. 3, 1905, ch. 1484, § 4 (1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 765.
	31:665(d)(2) (last sentence related to voluntary services).	

Explanatory Notes

The words "District of Columbia government" are added because of section 47–105 of the D.C. Code.

Cross References

Acceptance of gifts and bequests to Commissary Funds, Federal Prisons, see section 4043 of Title 18, Crimes and Criminal Procedure.

Acceptance of voluntary and uncompensated services—
- Administrator of Rural Electrification Administration, see section 911 of Title 7, Agriculture.
- Administrator of United States Fire Administration, see section 2218 of Title 15, Commerce and Trade.
- Chairman of Administrative Conference of United States, see section 575 of Title 5, Government Organization and Employees.
- Consumer Product Safety Commission, see section 2076 of Title 15, Commerce and Trade.
- Heads of agencies, see section 3111 of Title 5, Government Organization and Employees.
- National Sea Grant College Program, see section 1123 of Title 33, Navigation and Navigable Waters.
- Peace Corps, see section 2509 of Title 22, Foreign Relations and Intercourse.
- Small Business Administration, see section 636 of Title 15, Commerce and Trade.

Administrative discipline for violation of this section, see section 1349 of this title.

Criminal penalty for violation of this section, see section 1350 of this title.

Employment of personal assistants for handicapped federal employees, see section 3102 of Title 5, Government Organization and Employees.

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1349(b)	31:638a(c)(2) (2d sentence).........	July 16, 1914, ch. 141, § 5(c)(2) (2d sentence), 38 Stat. 508; restated Aug. 2, 1946, ch. 744, § 16(a), 60 Stat. 810.

Explanatory Notes

In subsection (a), the words "In addition to any penalty or liability under other law" are omitted as surplus. The words "District of Columbia government" are added because of section 47–105 of the D.C.Code.

In subsection (b), the words "of the Government" and "from duty" are omitted as unnecessary because of the restatement. The word "pay" is substituted for "compensation" for consistency. The word "agency" is substituted for "department" because of section 101 of the revised title [section 101 of this title] and for consistency.

Cross References

Adverse personnel actions against government employees, see section 7501 et seq. of Title 5, Government Organization and Employees.

Pay fixed by administrative action, see section 5307 of Title 5.

State or local government employee on detail to federal agency deemed to be employee of agency for purposes of subsec. (b) of this section, see section 3374 of Title 5.

Notes of Decisions

1. Unauthorized use of motor vehicles

Allegation that defendant, a former adjutant general of Iowa National Guard, directed series of unauthorized flights, using military aircraft, that served his own convenience rather than that of National Guard, charged a crime, even though defendant contended that former section 638a(c)(2) of this title provided administrative remedy for willful misuse by government personnel of any government-owned aircraft so as to preclude application of criminal statute to same conduct and that failure of revisors and codifiers of Title 18 governing crimes and criminal procedure to include conduct specifically addressed in applicable statute reflected legislative determination that this conduct was not crime. U. S. v. May, C.A.Iowa 1980, 625 F.2d 186.

Under former section 638a of this title, a government employee could have been suspended without pay for not less than one month if he used an official government-owned vehicle for other than official purposes, and where the use was slight, the court held that a 90-day suspension without pay was sufficient punishment. Clark v. U. S., 1963, 162 Ct.Cl. 477.

§ 1350. Criminal penalty

An officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than $5,000, imprisoned for not more than 2 years, or both.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 926.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1350	31:665(i)(1) (words after semicolon related to (a), (b)).	R.S. § 3679(i)(1) (words after semicolon related to (a), (b)); Mar. 3, 1905, ch. 1484, § 4 (1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 768.

Explanatory Notes

The words "District of Columbia government" are added because of section 47–105 of the D.C. Code. The words "upon conviction" are omitted as surplus.

Cross References

Contracts in excess of specific appropriation, see section 435 of Title 18, Crimes and Criminal Procedure.

Pay fixed by administrative action, see section 5307 of Title 5, Government Organization and Employees.

West's Federal Forms

Sentence and fine, see § 7531 et seq.

Library References

United States ⚷52.

C.J.S. United States §§ 60, 61.

§ 1351. Reports on violations

If an officer or employee of an executive agency or an officer or employee of the District of Columbia government violates section 1341(a) or 1342 of this title, the head of the agency or the Mayor of the District of Columbia, as the case may be, shall report immediately to the President and Congress all relevant facts and a statement of actions taken.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 926.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1351	31:665(i)(2) (related to (a), (b))	R.S. § 3679(i)(2) (related to (a), (b)); Mar. 3, 1905, ch. 1404, § 4 (1st par.), 33 Stat. 1257; Feb. 27, 1906, ch. 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch. 896, § 1211, 64 Stat. 768.

Explanatory Notes

The words "executive agency" are substituted for "agency" because the definition of "agency" in 31:665(d)(2) [former section 665(d)(2) of this title] applies to the source provisions restated in the section and because of section 102 of the revised title [section 102 of this title]. The word "Mayor" is used because of Reorganization Plan No. 3 of 1967 (eff. Aug. 11, 1967, 81 Stat. 948) [set out in the Appendix to Title 5, Government Organization and Employees] and sections 421, 422, and 771 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub.L. 93–198, 87 Stat. 789, 818). The word "President" is substituted for "President, through the Director of the Office of Management and Budget" because sections 101 and 102(a) of Reorganization Plan No. 2 of 1970 (eff. July 1, 1970, 84 Stat. 2085) [set out under section 501 of this title] designated the Bureau of the Budget as the Office of Management and Budget and transferred all functions of the Bureau to the President.

Cross References

Pay fixed by administrative action, see section 5307 of Title 5, Government Organization and Employees.

Notes of Decisions

1. Obligations charged against anticipated proceeds

Since obligations could not have been charged against anticipated proceeds from the sale of property, the charging of part of a contract for the installation of automatic telephones against anticipated proceeds from the sale of replaced equipment was in violation of former section 665 of this title and should have been immediately reported by the head of the agency to the President and Congress pursuant to subsec. (i)(2) of said section. 35 Comp.Gen. 356 (1955).

(b) This subchapter does not apply to—

(1) appropriations for the District of Columbia government; or

(2) appropriations to be disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 935.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1551(a)	31:701(c) (1st sentence)	July 25, 1956, ch. 727, § 1(c) (1st sentence), 70 Stat. 648; July 8, 1959, Pub.L. 86–79, § 210(b), 73 Stat. 167.
1551(b)	31:707	July 25, 1956, ch. 727, § 8, 70 Stat. 650

Explanatory Notes

In subsection (b)(1), the words "District of Columbia government" are substituted for "District of Columbia" for consistency.

§ 1552. Procedure for appropriation accounts available for definite periods

(a) Each appropriation account available for obligation for a definite period is closed as follows:

(1) The obligated balance is transferred on September 30th of the 2d fiscal year after the period of availability ends to an appropriation account of the agency responsible for paying the obligation. Amounts transferred from all appropriation accounts for the same general purpose are merged in the account for paying obligations.

(2) The unobligated balance is withdrawn at the end of the period of availability for obligation and reverts to the Treasury or, if derived only from a special or trust fund and not otherwise provided, reverts to the fund from which derived. The withdrawal shall be made not later than the November 15 occurring after the period of availability ends. When the head of the agency decides that part of a withdrawn unobligated balance is required to pay obligations and make adjustments, that part may be restored to the appropriate account.

(b) Collections authorized to be credited to an appropriation, but not received before the transfer of the obligated balance under subsection (a)(1) of this section, are credited to the account into which the obligated balance was transferred. However, collections made by the Comptroller General for other agencies may be deposited in the Treasury as miscellaneous receipts.

(c) A withdrawal made under subsection (a)(2) of this section is accounted for and reported as of the fiscal year in which the appropriation concerned expires for obligation.

(d) The obligated balance of an appropriation made available for obligation for a definite period under a discontinued appropriation heading may be merged at the end of the 2d complete fiscal year after the fiscal year for which an appropriation is available for obligation—

(1) in the appropriation accounts provided under subsection (a) of this section; or

(2) in other accounts established under this subchapter for discontinued appropriations of the agency responsible for paying the obligations.

(Pub.L. 97–258, Sept. 13, 1982, 96 Stat. 935.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1552(a)	31:701(a)(1)	July 25, 1956, ch. 727, § 1(a)(1), 70 Stat. 647; restated July 12, 1974, Pub.L. 93–344, § 503(a), 88 Stat. 321.
	31:701(a)(2)	July 25, 1956, ch. 727, § 1(a)(2), 70 Stat. 648; June 29, 1960, Pub.L. 86–533, § 1(25), 74 Stat. 249.
	31:701(b)	July 25, 1956, ch. 727, § 1(b), 70 Stat. 648; restated July 12, 1974, Pub.L. 93–344, § 503(b), 88 Stat. 322; Apr. 21, 1976, Pub.L. 94–273, § 45, 90 Stat. 382.
1552(b)	31:701(c) (last sentence)	July 25, 1956, ch. 727 §§ 1(c) (last sentence), (d), 5, 70 Stat. 648, 649.
1552(c)	31:701(d)	
1552(d)	31:705	

Explanatory Notes

In subsection (a), the text of 31:701(b)(1)(A) and (2)(A) [former section 701(b)(1)(A) and (2)(A) of this title] and the words "for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976" are omitted as executed.

In subsection (a)(1), the words "period of availability ends" are substituted for "that period or the fiscal year or years, as the case may be, for which the appropriation is available for obligation" to eliminate unnecessary words.

In subsection (a)(2), the words "reverts to the Treasury" are substituted for "if the appropriation was derived in whole or in part from the general fund, shall revert to such fund" to eliminate unnecessary words.

In subsection (b), the words "not received before" are substituted for "not received until after" for clarity. The words "unless otherwise authorized by law" are omitted as surplus. The words "Comptroller General" are substituted for "General Accounting Office" for consistency.

In subsection (c), the text of 31:701(d) [former section 701(d) of this title] (last sentence) is omitted as executed.

In subsection (d), before clause (1), the word "heading" is substituted for "heads" for clarity and consistency.

Cross References

Availability of appropriation accounts to pay obligations, see section 1553 of this title.

Coast Guard accounting to reflect year identity of merged obligated balances, see section 659 of Title 14, Coast Guard.

Reports by Comptroller General on appropriation accounts, see section 1556 of this title.

Review of appropriation accounts, see section 1554 of this title.

Withdrawal of unobligated balances of appropriations for indefinite periods, see section 1555 of this title.

"(7) Obligations and adjustment of obligations.—(A) [illegible] unobligated balances under paragraph (3) or cancellation of obligated balances under paragraph (4) or paragraph (6) and subject to [illegible] of subparagraph (B), obligations and adjustments to obligations that would have been chargeable to those balances before such [illegible] and that are not otherwise chargeable [illegible] of the agency concerned may be charged to current appropriations of that agency available for the same purpose. Any [illegible] made pursuant to this subsection shall be limited to the unobligated expired balances of the original appropriation available for the [illegible].

"(B) Any charge made pursuant to subparagraph (A) shall be subject to the maximum amount chargeable under subsection (b) of section 1553 of title 31, United States Code [section 1553(b) of this title], as amended by this section, and shall be included in the calculation of the total amount charged to [illegible] account under that section.

"(8) Obligations [illegible] adjustments of obligations for expired but not closed accounts.—(A) Subject to subparagraphs (B), (C), and (D), in the case of an appropriation account [illegible] fiscal year before fiscal year 1992 for which the period of availability for obligation has expired but which has not been closed under the [illegible] of section 1552(a) of title 31, United States Code [section 1552(a) of this title], or paragraph (4) of this section, an obligation and an adjustment of an obligation may be charged to any current appropriation account of the Department of Defense that is available for the same purpose as the expired account if—

"(i) the obligation would have been properly chargeable (except as to amount) to the expired account before the end of the period of availability of that account; and

"(ii) the obligation [illegible] otherwise properly chargeable to any current appropriation account of the Department of Defense.

"(B) The total amount charged to a current appropriation account under subparagraph (A) may not exceed an amount [illegible] to the lesser of—

"(i) one percent of [illegible] total amount of the appropriations for that account; or

"(ii) one percent of [illegible] total amount of the appropriations [illegible] expired account.

"(C) No obligation or [illegible] of an obligation may be charged [illegible] to the provisions of this paragraph until the Committees on Armed Services and the Committees [illegible] Appropriations of the Senate and House of Representatives are notified of the intent to make such a charge and a period of 30 days elapses [illegible] notification is submitted.

"(D) Certifications.—[illegible] adjustment of an obligation may be charged pursuant to the provisions of this paragraph until the Secretary of Defense (except as otherwise provided in subparagraph (E)) certifies [illegible] following:

"(i) That the limitations on expending and obligating amounts established [illegible] to section 1341 of title 31, United States Code [section 1341 of this title] [illegible] being observed within the Department of Defense.

"(ii) That reports on any violations of such section 1341 [section 1341 of this title], whether intentional or inadvertent, are being [illegible] to the President and Congress immediately and with all relevant facts and a statement of actions taken as required by section 1351 of title 31, United States Code [section 1351 of this title].

(E) Alternative to certification.—If the Secretary of Defense is unable to make the certifications referred to in subparagraph (D) within 60 days after the date of the enactment of this subparagraph [Oct. 23, 1992], the Secretary shall submit to the Congress a report stating that the Secretary is unable to make such certifications and setting forth the actions that the Secretary will take in order to enable the Secretary to make such certifications after the end of that period.".

Legislative History

For legislative history and purpose of Pub.L. 101-510, see 1990 U.S. Code Cong. and Adm. News, p. 2931. See, also, Pub.L. 102-484, 1992 U.S. Code Cong. and Adm. News, p. 1636.

§ 1552. Procedure for appropriation accounts available for definite periods

(a) On September 30th of the 5th fiscal year after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account [illegible] canceled and thereafter shall not be available for obligation or expenditure for any purpose.

(b) Collections authorized or required to be credited to an appropriation account, but not received before closing of the account under subsection (a) or under section 1555 of this title shall be deposited in the Treasury as miscellaneous receipts.

(As amended Pub.L. 101-510, Div. A, Title XIV, § 1405(a)(1), Nov. 5, 1990, 104 Stat. 1676.)

HISTORICAL AND STATUTORY NOTES

1990 Amendments

Pub.L. 101-510 amended text generally, revising and restating former subsecs. (a) to (d) as subsecs. (a) and (b).

Audit Of Obligated Balances Of Department Of Defense

Section 1406 of Pub.L. 101-510, provided that:

"(a) Audit requirement.—The Secretary of Defense shall provide for an audit of each account of the Department of Defense established under paragraph (1) of section 1552(a) of title 31, United States Code [subsec. (a) of this section], as in effect on the day before the date of the enactment of this Act [Nov. 5, 1990]. The audit shall, with respect to each such account, identify—

"(1) the balance in the account;

"(2) the amount of such balance that is considered by the Secretary (as of the time of the audit) to represent amounts required for valid obligations (as supported by documentary evidence as required by section 1501 of title 31) [section 1501 of this title] and the amount of such balance that is considered by the Secretary (as of the time of the audit) to represent amounts for obligations that are considered no longer valid;

"(3) the sources of amounts in the account, shown by fiscal year and by amount for each fiscal year; and

"(4) such other matters as the Secretary considers appropriate.

"(b) Deobligation of obligations no longer valid.—Any obligated amounts in accounts of the Department of Defense established under paragraph (1) of section 1552(a) of title 31, United States Code [section 1552(a) of this title], that are determined pursuant to the audit under subsection (a) to represent amounts for obligations that are no longer valid shall be deobligated and canceled.

"(c) Report on audit.—Not later than December 31, 1991, the Secretary of Defense shall submit to Congress a report containing the results of the audit conducted pursuant to subsection (a). The report shall set forth—

"(1) the information required to be identified pursuant to subsection (a); and

"(2) for each appropriation account (A) the average length of time funds have been obligated, (B) the average size of the obligation, and (iii) the object classification of the obligations, all shown for total obligations and separately for valid obligations and obligations that are no longer valid."

Transitional Provisions For Amendments By Pub.L. 101-510

Section 1405(b) of Pub.L. 101-510, provided that amendments made by section 1405(a) would be applicable to accounts in which the obligated balance has not been transferred under section 1552(a)(1) of this title as of Nov. 5, 1990, for restoration of unobligated amounts where the obligated balance has not been transferred pursuant to section 1551(a)(1), as effective before Nov. 5, 1990, for cancellation of unobligated funds withdrawn pursuant to section 1552(a)(2) of this title prior to Nov. 5, 1990, and allowed charges to be taken against current appropriations with respect to adjustments to balances, see section 1405(b) of Pub.L. 101-510, set out as a note under section 1551 of this title.

Legislative History

For legislative history and purpose of Pub.L. 101-510, see 1990 U.S.Code Cong. and Adm. News, p. 2931.