

**SECTION-BY-SECTION**

**ANALYSIS**

**OF THE**

**FOREIGN ASSISTANCE ACT**

**OF 1961**

**(P.L. 87-195)**

**SECTION - BY - SECTION ANALYSIS**

**OF THE**

**FOREIGN ASSISTANCE ACT OF 1961**

**(P.L. 87-195)**

AGENCY FOR INTERNATIONAL DEVELOPMENT

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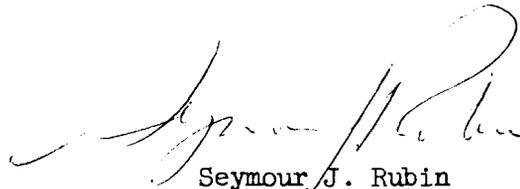
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M. O. 101.1 - Section-by-Section Analysis of the Foreign Assistance Act of 1961

INTRODUCTION

This section-by-section analysis of the Foreign Assistance Act of 1961 (FAA) includes a brief description of each of the provisions of this statute, reference to pertinent legislative history and to related legislation, and a discussion of some of the major legal problems. These analyses reflect the present thinking of the Office of the General Counsel of AID and do not represent official positions of the Executive Branch, and are subject to further interpretation as AID gains more experience under the FAA.

In order to simplify the problem of keeping this material up to date, the pages have been numbered in separate sequences for each FAA section (or, in some cases a number of sections) so that supplemental pages prepared in the future may be either substituted or added to those transmitted herewith. It is suggested that this material be kept either in a separate volume reserved for legislative matters or inserted as an addition to Manual Order 101.



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Agency for International Development

10/17/61

ABBREVIATIONS

AID - Agency for International Development

Exec. Branch Sec.-by-Sec. Analysis - Executive Branch Section-by-  
Section Analysis of Proposed  
Foreign Assistance Bill (June 9,  
1961)

FA Approp. Act 1962 - Foreign Assistance and Related Agencies  
Appropriation Act, 1962

FAA - The Foreign Assistance Act of 1961

H. Conf. Comm. Rep. - Statement of the Managers on the Part of the  
House on the Conference Report on the FAA (H. R.  
Rep. No. 1088, 87th Cong., 1st Sess. (1961))

HCFA - House Committee on Foreign Affairs

HCFA Rep. - Report of the HCFA on the Mutual Security Act of 1961  
(H. R. Rep. No. 851, 87th Cong., 1st Sess. (1961))

MSA - Mutual Security Act of 1954, as amended

SCFR - Senate Committee on Foreign Relations

SCFR Rep. - Report of the SCFR on the FAA (S. Rep. No. 612,  
87th Cong., 1st Sess. (1961))

THE FOREIGN ASSISTANCE ACT OF 1961

CONTENTS

PART I [ACT FOR INTERNATIONAL DEVELOPMENT OF 1961]

CHAPTER 1 - Short Title And Policy

- Sec. 101 Short Title
- Sec. 102 Statement of Policy

CHAPTER 2 - Development Assistance

Title I - Development Loan Fund

- Sec. 201 General Authority
- Sec. 202 Authorization
- Sec. 203 Fiscal Provisions
- Sec. 204 Development Loan Committee
- Sec. 205 Use of the Facilities of the International  
Development Association

Title II - Development Grants And Technical Cooperation

- Sec. 211 General Authority
- Sec. 212 Authorization
- Sec. 213 Atoms for Peace
- Sec. 214 American Schools and Hospitals Abroad
- Sec. 215 Loans To Small Farmers
- Sec. 216 Voluntary Agencies

Title III - Investment Guaranties

- Sec. 221 General Authority
- Sec. 222 General Provisions
- Sec. 223 Definitions
- Sec. 224 Housing Projects in Latin American Countries

Title IV - Surveys Of Investment Opportunities

- Sec. 231 General Authority
- Sec. 232 Authorization
- Sec. 233 Definitions

Title V - Development Research

- Sec. 241 General Authority

CHAPTER 3 - International Organizations And Programs

- Sec. 301 General Authority
- Sec. 302 Authorization
- Sec. 303 Indus Basin Development

CHAPTER 4 - Supporting Assistance

- Sec. 401 General Authority
- Sec. 402 Authorization

CHAPTER 5 - Contingency Fund

- Sec. 451 Contingency Fund

CHAPTER 6 - Assistance to Countries Having Agrarian Economies

- Sec. 461 Assistance to Countries Having Agrarian Economies

PART II [INTERNATIONAL PEACE AND SECURITY ACT OF 1961]CHAPTER 1 - Short Title And Policy

- Sec. 501 Short Title
- Sec. 502 Statement of Policy

CHAPTER 2 - Military Assistance

- Sec. 503 General Authority
- Sec. 504 Authorization
- Sec. 505 Utilization of Assistance
- Sec. 506 Conditions of Eligibility
- Sec. 507 Sales
- Sec. 508 Reimbursements
- Sec. 509 Exchanges
- Sec. 510 Special Authority
- Sec. 511 Restrictions on Military Aid to Latin America

PART III [GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS]CHAPTER 1 - General Provisions

- Sec. 601 Encouragement of Free Enterprise and Private participation
- Sec. 602 Small Business
- Sec. 603 Shipping on United States Vessels
- Sec. 604 Procurement
- Sec. 605 Retention and Use of Items
- Sec. 606 Patents and Technical Information
- Sec. 607 Furnishing of Services and Commodities

PART III [GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS]CHAPTER 1 - General Provisions

- Sec. 608 Advance Acquisition of Property
- Sec. 609 Special Account
- Sec. 610 Transfer Between Accounts
- Sec. 611 Completion of Plans and Cost Estimates
- Sec. 612 Use of Foreign Currencies
- Sec. 613 Accounting, Valuation, and Reporting of Foreign Currencies
- Sec. 614 Special Authorities
- Sec. 615 Contract Authority
- Sec. 616 Availability of Funds
- Sec. 617 Termination of Assistance
- Sec. 618 Economic Assistance to Latin America
- Sec. 619 Assistance to Newly Independent Countries
- Sec. 620 Prohibitions Against Furnishing Assistance to Cuba and Certain Other Countries

CHAPTER 2 - Administrative Provisions

- Sec. 621 Exercise of Functions
- Sec. 622 Coordination with Foreign Policy
- Sec. 623 The Secretary of Defense
- Sec. 624 Statutory Officers
- Sec. 625 Employment of Personnel
- Sec. 626 Experts, Consultants, and Retired Officers
- Sec. 627 Detail of Personnel to Foreign Governments
- Sec. 628 Detail of Personnel to International Organizations
- Sec. 629 Status of Personnel Detailed
- Sec. 630 Terms of Detail or Assignment
- Sec. 631 Missions and Staffs Abroad
- Sec. 632 Allocation and Reimbursement Among Agencies
- Sec. 633 Waivers of Certain Laws
- Sec. 634 Reports and Information
- Sec. 635 General Authorities
- Sec. 636 Provisions on Uses of Funds
- Sec. 637 Administrative Expenses

CHAPTER 3 - Miscellaneous Provisions

- Sec. 641 Effective Date and Identification of Programs
- Sec. 642 Statutes Repealed
- Sec. 643 Saving Provisions
- Sec. 644 Definitions
- Sec. 645 Unexpended Balances
- Sec. 646 Construction
- Sec. 647 Dependable Fuel Supply

PART IV [AMENDMENTS TO OTHER LAWS]

- Sec. 701 [§1 of Defense Base Act]
- Sec. 702 [§101(a)(4) of War Hazards Compensation Act]
- Sec. 703 [§305 of Mutual Defense Assistance Control Act of 1951]
- Sec. 704 [§104(e) of Agricultural Trade Development and Assistance Act of 1954]
- Sec. 705 [§5 of Joint Resolution to Promote Peace and Stability in the Middle East]
- Sec. 706 [§4 of Act to Provide For Assistance in the Development of Latin America and in the Reconstruction of Chile]
- Sec. 707 [§523(d) of the Mutual Security Act of 1954]
- Sec. 708 [§701, 872(b) and (c), 911(9) and (10), 933(a), 942, and 942(a) of the Foreign Service Act of 1946]
- Sec. 709 [§2 of The Act of July 31, 1945 (22 U.S.C. 279a.)]
- Sec. 710 [§1 of An Act to Authorize Participation by the United States in the Interparliamentary Union]

10/17/61

SECTION-BY-SECTION ANALYSIS  
OF  
THE FOREIGN ASSISTANCE ACT OF 1961\*  
(P.L. 87-195)

Secs. 101-102  
(1)

PART I

CHAPTER 1 - SHORT TITLE AND POLICY

Section 101. SHORT TITLE AND POLICY.

FAA Sec. 101 provides that Part I thereof (Secs. 101-461), which generally supersedes the nonmilitary assistance portion of the MSA, may be cited as the "Act for International Development of 1961." Note, however, that many of the sections with which the AID will be concerned are found in FAA Parts II (Secs. 501-511), III (Secs. 601-647), and IV (Secs. 701-710), and are consequently not part of the Act for International Development.

Section 102. STATEMENT OF POLICY.

The tenor of FAA Sec. 102 is similar to MSA Sec. 2. It recognizes the continued threat of international communism but also attempts to insert a more positive base for U. S. policy by emphasizing, for example, the goal of demonstrating that economic growth and political democracy can go hand in hand in developing an enlarged community of free, stable, and self-reliant countries.

The section also contains provisions directed toward the new concepts which are developed later in the substantive sections for economic assistance. Among the new points added: (1) Economic aid is to be based upon long-term plans in order to promote greater continuity in programs. (2) Aid programs will be responsive to the efforts of peoples to help themselves. (3) Emphasis will be placed upon long-range development assistance. (4) Such assistance will be complemented by the furnishing of surplus agricultural commodities and excess property under other acts. (5) Social as well as economic aspects of economic growth will be promoted.

In declaring it to be U. S. policy to support "freedom of navigation in international waterways," the section has retained a greatly modified portion of MSA Section 2(f). It does not include, as the MSA did, any statement against furnishing aid to countries engaging in economic warfare against other aid-receiving nations, and there is no requirement for a Presidential determination concerning the application of these principles. For a related provision, however, see FA Approp. Act. 1962 Sec. 108.

\* FA Approp. Act 1962 Sec. 111, amended P.L. 87-195  
to give it this title.

11/15/61

Secs. 101-102  
(2)

The section has few, if any, direct legal consequences. It neither compels nor prohibits AID from engaging in any particular activity. It should, however, influence AID in matters of policy. The new points referred to above were proposed by the administration and represent policies which AID intends to carry out to the maximum extent possible.

Other points to be noted: Congress has stated there that P.L. 480 is to be viewed as a "complement" to economic assistance (i.e., it is not simply a program for surplus disposal). Two references are made to the furnishing of assistance "upon request" (see 6th and 7th paras.) which may be used as a basis for a policy requirement that aid arrangements generally will be agreed upon with the recipient government. In this way AID would be able to assure itself that its activities will be carried on in response to the needs and desires of the recipient countries. Occasionally it may be possible to use the purposes stated in Sec. 101 in satisfying the requirements of other FAA sections which authorize particular acts to be taken "in furtherance of the purposes" of Part I (e.g., Sec. 607, Sec. 612, Sec. 627, and Sec. 628).

Cross References: Other statements of policy may be found at several places in the FAA and the FA Approp. Act 1962. See FAA Sec. 215 (Loans to Small Farmers), FAA Sec. 461 (Assistance to Countries Having Agrarian Economies) FAA Sec. 635(c) (Maximum use of voluntary relief agencies), FA Approp. Act 1962 Sec. 107 (Seating of Communist China in the United Nations), FA Approp. Act 1962 Sec. 108 (Application of principles of non-discrimination because of race or religion in negotiations with FAA funds), FA Approp. Act 1962 Sec. 112 (Consideration to nations sharing the U. S. view on the world crisis).

Next page is Sec. 201  
(1)

9

## CHAPTER 2 - DEVELOPMENT ASSISTANCE

## TITLE I DEVELOPMENT LOAN FUND

This title provides the basic authority for the President to make loans for economic development. Although it is in many respects similar to the previous lending authority of the DLF under MSA Secs. 201-206, important changes include (1) a five-year authorization for annual appropriations, (2) an authorization for loans and not for other financial transactions, and (3) a requirement for dollar repayment. Instead of the much debated borrowing authority, there is an authorization for annual appropriations of no-year funds in each of five fiscal years starting in FY 1962 and ending in FY 1966, and an authorization to enter into long-term commitments of unappropriated funds subject only to the appropriation of such funds.

Section 201. GENERAL AUTHORITY.

FAA Sec. 201(a) directs the President to establish a "Development Loan Fund" for use to make loans under this title. This fund is not a corporate body as provided by MSA Sec. 202(a). Over the Executive Branch's objections the DLF name was retained on the ground that it is well established and widely known under the MSA and its retention will promote continuity and avoid confusion in foreign countries. This provision is not intended, however, to affect the integrated operation of AID (H. Conf. Comm. Rep. p. 46).

FAA Sec. 201(b) is similar in function to MSA Sec. 202(b). It authorizes the President to make loans with principal and interest payable only in U. S. dollars "in order to promote the economic development of less developed friendly countries and areas." The promotion of economic development does not require that financing be confined to individual projects; instead "the use of loan funds will be for whatever purposes and activities . . . will make the most significant contribution to economic growth" (including, where a national development program is worthy of support, general credits for support of general imports, capital imports, and capital projects). (HCFA Rep. p. 15). Reference to "less developed friendly countries and areas" is found throughout the FAA, and it is understood (a) that the phrase "less developed" was used primarily because it contains less of a stigma than the word "underdeveloped", (b) that the word "friendly" excludes any country or area dominated or controlled by the international communist movement (see FAA Sec. 620(b) also), and (c) that the reference to "areas" has the effect of permitting the furnishing of assistance, among other things, to dependent overseas territories and arguably to underdeveloped areas of developed countries.

The President is to emphasize assistance to long-range plans and programs designed to develop economic resources and increase productive capacities. Unlike MSA Sec. 202(b) the new section contains no authority regarding investment guaranties (see FAA Secs. 221-224; also FAA Sec. 635(g)(3) which authorizes the President to guaranty payments against certain instruments acquired in the making of loans). The new section does not explicitly exclude

Next page is Sec. 201

(2)

10

from development lending the acquisition of equity securities by grant or direct purchase as did MSA Sec. 202(b), but this prohibition is continued explicitly by FAA Sec. 635(g)(3) and is applicable to any loans under the FAA.

The section sets forth six specific considerations to be taken into account by the President in making loans under this title and provides that such loans shall be made only upon a finding of reasonable prospects of repayment. The requirement in the MSA that loans be made "only on the basis of firm commitments by the borrowers to make repayment" has been omitted, but, according to the HCFA, this "does not involve any less emphasis on repayment" (HCFA Rep. p. 14). The factors to be taken into account are the following:

- (1) "Whether financing could be obtained in whole or in part from other free-world sources on reasonable terms" - Same as MSA Sec. 202(b)(1).
- (2) "The economic and technical soundness of the activity to be financed" - Same as MSA Sec. 202(b)(2). See FAA Sec. 611 (formerly MSA Sec. 517) which is also applicable to development loans and requires certain types of planning to precede obligations with the object of assuring the soundness of the activity.
- (3) "Whether the activity gives reasonable promise of contributing to the development of economic resources or to the increase of productive capacities in furtherance of the purposes of this title." Same as MSA Sec. 202(b)(3) except that in the MSA the phrase "or free economic institutions" was included after the phrase "development of economic resources."
- (4) "The consistency of the activity with, and its relationship to, other development activities being undertaken or planned, and its contribution to realizable long-range objectives." This is new.
- (5) "The extent to which the recipient country is showing a responsiveness to the vital economic, political, and social concerns of its people, and demonstrating a clear determination to take effective self-help measures" - This is one of the most important criteria to be included in the new legislation. It is a stronger statement than the one in MSA Sec. 202(b) which referred to a "clear willingness to take effective self-help measures" rather than "a clear determination" to do so. FAA Sec. 618 requires development lending assistance to Latin America to be furnished in accordance with the principles of the Act of Bogota which includes more specific treatment of self-help principles. See also the "self-help" section of the Congressional Presentation "Redbook" entitled The Act for International Development in a Program for the Decade of Development (pp. 127-137).

- (6) "The possible effects upon the United States economy, with special reference to areas of substantial labor surplus, of the loan involved." Substantially similar to the second sentence of MSA Sec. 202(b). This judgment will be made as of the time of the making of the loan; unanticipated effects upon the United States economy which develop after the making of the loan will not affect the loan. See also FAA Sec. 604(a) which prohibits procurement outside the United States without a Presidential determination. The House of Representatives proposed that the following be included: "If the President finds that a loan . . . proposed to be made under this part would have a substantially adverse affect on the U. S. economy, or any substantial segment thereof, the loan . . . shall not be made;" however, the Conf. Comm. agreed to apply this standard only to development grants (see FAA Sec. 211) and not to development loans because they will be repayable in dollars. H. Conf. Comm. Rep. p. 46.

The fact that the President must "take into account" all of the above factors does not mean he must reach a favorable conclusion with regard to each one in order to make a loan, nor that the six factors are absolute criteria. On the other hand, if conclusions on any of these factors are unfavorable AID will have serious problems in its relationship with Congress and will have to be prepared to explain how it concluded that the proposed activity satisfied the unqualified requirement of the statute that it "promote economic development." Note that (1) and (6) above, however, are not related to the promotion of economic development.

The President is authorized to make such loans "on such terms and conditions as he may determine." The only statutory requirement is that all loans be repaid in dollars. The HCFA recognized (1) that interest rates may be as low as one percent, and some loans will probably be interest free and (2) that terms of repayment of up to 50 years will be permitted, in some cases with no repayment of principal for initial periods of up to ten years. AID will have flexibility to establish terms and conditions that will reflect the capacity of the recipient country to service its debts. (HCFA Rep. p. 14; SCFR Rep. p. 8.) The HCFA stated that arrangements for dollar repayment may include loans which non-governmental borrowers repay in local currencies on conventional terms to an account which the recipient country agrees to convert into dollars over a longer period of time (HCFA Rep. p. 14), but AID's position on this point is still under consideration. For other FAA provisions applicable to FAA loans in general see FAA Sec. 635(g).

Borrowers may be one of a number of types. FAA Sec. 635(b) authorizes the making of loans to "any individual, corporation, or other body of persons, friendly government, or government agency, whether within or without the United States." Or, as the HCFA stated, AID "will be able to make loans or extend credits to a variety of borrowers including foreign governments,

foreign public enterprises, foreign individuals or private firms, U. S. individuals and corporations intending to undertake productive investments abroad and international organizations." (HCFA Rep. pp. 14-15). FAA Sec. 601(b)(4) encourages the President to carry out assistance programs, where appropriate, through private channels and, as practicable, "in conjunction with local private or governmental participation, including loans under . . . section 201 to any individual, corporation, or other body of persons." FAA Sec. 205 provides for loans to the International Development Association. Thus it would be possible, for example, to help finance the costs of an investment survey under Secs. 231-233 and then to lend funds to the surveyor to carry out the project.

FAA Sec. 201(c) provides that funds available for development lending may not be decreased by the authorities of FAA Sec. 610, which allows the President in some cases to transfer 10% of the funds made available under one aid category to another aid category, but it will be possible to use the authority of Sec. 610 in the reverse manner to increase the amount of funds available for development lending. Nor can the provisions of Title I be waived by the authority of FAA Sec. 614(a), which authorizes the President to use funds and military drawdown authority up to \$250 million without regard to the requirements of the FAA and certain other legislation. Provisions outside title I which affect development lending may be waived under Sec. 614(a).

FAA Sec. 201(d) provides that development lending funds shall not be loaned or reloaned at rates of interest "excessive or unreasonable" for the borrower and in no event higher than the "applicable legal rate of interest" of the country in which the loan is made. AID will conduct a study to determine the applicable legal rates of interest for the various countries in which loans are to be made. This provision was a compromise adopted instead of one which would have prohibited relending within the recipient country at rates of interest more than 5% greater than the rate charged by the U. S.

Cross References: Development lending operations are subject to the requirements of several other FAA sections. See FAA Sec. 611 and FA Approp. Act 1962 Sec. 102 on completion, before obligation, of plans and cost estimates and computation of benefits and costs; for the first time development lending is subject to the requirement (FAA Sec. 611(c) that certain contracts for construction, if practicable, be made on a competitive basis. FAA Sec. 620(d) requires certain countries receiving loans for productive enterprises to agree to establish procedures to limit the export to the U. S. of the products of such enterprises. Development lending operations in Latin American must be furnished in accordance with the principles of the Act of Bogota (see FAA Sec. 618). Additional provisions regarding FAA loans in general are set out in FAA Sec. 635(g). Section 4 of The Bretton Woods Agreements Act which established The National Advisory Council, (22 U.S.C. 286; see p. 332 of Legislation on Foreign Relations 1960) applies to

development lending by its own terms even though MSA Sec. 206 has not been carried over into the FAA. Other restrictions on development lending operations are FAA Sec. 604 (no procurement **outside U. S. unless President makes determination**); FAA Sec. 620(a)-(c) (assistance to Cuba, to governments controlled by international communism or to any government with an acknowledged debt for goods and services to a U. S. citizen), FA Approp. Act 1962 Sec. 105 (no use of FAA appropriated funds for pensions, etc., for past, present or future military personnel of recipient country); FA Approp. Act 1962 Sec. 106 (no use of funds for Investment Incentive Fund Program); and FA Approp. Act 1962 Sec. 601 (no funds for publicity or propoganda within U. S.). Development lending, however, is not subject to the requirement of FA Approp. Act 1962 Sec. 104 that not more than 20% of an appropriation item may be obligated and/or reserved during the last month of availability. Under FAA Sec. 636(f) development grants may be used for non-administrative expenses of AID in carrying out development lending and other functions, and development grant funds would thus be available, for example, for salaries and travel expenses of technicians who work on development lending projects. FAA Sec. 634(b) requires certain publicity concerning each development loan.

Section 202. AUTHORIZATION.

FAA Sec. 202(a) authorizes the appropriation for development lending purposes of \$1,200,000,000 for FY 1962 and \$1,500,000,000 for each fiscal year from FY 1963 through FY 1966. Any unappropriated portion of these authorized amounts in any Fiscal Year may be appropriated in any subsequent Fiscal Year during the same period in addition to the amount otherwise authorized to be appropriated for such subsequent Fiscal Year. The FA Approp. Act 1962 appropriated \$1,112,500,000 to remain available until expended (i.e., "no-year funds") for this purpose.

FAA Sec. 202(b) is new. In recognition for the need for reasonable advance assurances in the interest of orderly and effective execution of long-term plans and programs of development assistance, this section provides that, whenever the President determines that it is "important to the advancement of the United States interests and necessary in order to further the purposes of this title", the President is authorized to enter into agreements committing authorized but not yet appropriated development lending funds "subject only to the annual appropriation of such funds" and the terms and conditions of Secs. 201-205. This provision is an express statement of authority which would exist in its absence and is designed to serve as Congressional recognition of the importance of long-range commitments. It was adopted instead of the so-called borrowing authority with one result being that development lending operations will not be subject to the Government Corporation Control Act as originally proposed, except for a system of accounts required by FAA Sec. 635(g)(5). The commitments authorized by this section will be in some ways similar to certain ones which have been made by the Executive Branch in past years pursuant to National Security Council Determination 1550 dated May 8, 1956. Determinations under NSC 1550, however, have generally not included large commitments to support an entire development plan. This section will not affect the authority of the Executive Branch to make commitments for other categories of assistance (e.g., development grants and supporting assistance) in the same manner as previously under NSC 1550. The H. Conf. Comm. stated that the insertion of the authorization to make long-range commitments "is not intended to imply the absence of similar authority under other categories of aid." (H. Conf. Comm. Rep. p. 48.) The H. Conf. Comm. stated its understanding that the long-range commitment authority of Sec. 202(b) will permit the Executive Branch to make commitments which will be "honored" by the Congress "unless there is evidence of obvious bad management or the other country has failed to meet its responsibilities." (See in general H. Conf. Comm. Rep. p. 48.)

FAA Sec. 202(c) requires that the President notify the Senate Foreign Relations and Appropriations Committees and the Speaker of the House of any agreements making advance commitments pursuant to Sec. 202(b) "including the amounts of funds involved and undertakings of the parties thereto." Such notification need not be made in advance of the commitment agreement, but rather "upon conclusion" thereof.

FAA Sec. 202(d) provides that dollar assets of the DLF previously made available which remain unobligated and not committed for loans repayable in foreign currencies when the DLF is abolished in its corporate form shall be available for use for purposes of this title. Thus DLF dollar assets committed for local currency loans will not be transferred to the new development lending category. This will permit orderly liquidation of **those** existing DLF commitments which cannot be honored pursuant to FAA Sec. 202 because it is limited to dollar repayable loans. The President under FAA Sec. 621(c) will designate an officer who may exercise the rights established with respect to DLF to carry out economic assistance functions. **The dollars received from DLF investment guaranty fee collections are generally not subject to this provision (see FAA Sec. 222(b)).**

Section 203. FISCAL PROVISIONS.

FAA Sec. 203 is based upon MSA Sec. 204(a) and establishes the revolving character of development lending funds by providing that all receipts from development loans shall be available for use for the purposes of the development lending title of the FAA. It makes no change in the authority granted under the MSA section except that the provision relating to foreign currencies has been deleted since repayments of loans in foreign currencies will no longer be possible.

This section applies to loans made in accordance with the authority of Sec. 201(b) with funds made available for such purpose from the contingency funds (FAA Sec. 451) and with funds transferred from other categories of aid to development lending pursuant to FAA Sec. 610. Whether future dollar repayments of past DLF loans will be available for use under the FAA development lending authority is under consideration. (See FAA Sec. 612 for the handling of future local currency repayments of past DLF loans.)

Section 204. DEVELOPMENT LOAN COMMITTEE .

FAA Sec. 204 directs the President to establish an interagency Development Loan Committee consisting of such officers from federal agencies as he may determine. This is different from MSA Section 205 which specified the officers who were to be members of the DLF Board of Directors. The appointment of members of the committee will be with Senate approval except **in the case of officers serving in positions in which they have previously been approved by the Senate.** The Executive Order provides that the Committee shall consist of the AID Administrator (Chairman), the Chairman of the Board of Directors of the Export-Import Bank of Washington, the Assistant Secretary of State for Economic Affairs, the Assistant Secretary of the Treasury dealing with international finance, and the head of AID's Office of Development Financing. The purpose of the committee will be to establish standards and criteria for development lending operations in accordance with the foreign and financial policies of the United States. Unlike the old DLF

10/17/61

Secs. 202-205  
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Board of Directors the committee will not be vested with responsibility for management which is now assigned by the statute to the President and which has been delegated to the Administrator of AID.

Section 205. USE OF THE FACILITIES OF THE INTERNATIONAL DEVELOPMENT ASSOCIATION.

FAA Sec. 205 is new. It authorizes the President to lend up to 10 percent of development lending funds to the IDA in accordance with the provisions of the development lending title whenever the President determines that "it would more effectively serve the **purposes of this title and the policy contained in section 619**" (which urges that assistance to newly independent countries be furnished through multilateral organizations or plans). Under the IDA Act (P.L. 86-565) borrowing of development loan funds was not authorized but such borrowing had been contemplated when the IDA was established. See FAA Secs. 301-303 for the general authority for furnishing of assistance through international organizations.

Next page is Sec. 211  
(1)

17

## TITLE II - DEVELOPMENT GRANTS AND TECHNICAL COOPERATION

The authority included in this title is based upon but is substantially more general than the authority contained in the technical cooperation provisions of MSA Secs. 301-305. While the category includes activities formerly financed with technical assistance funds, it is not limited to technical assistance but permits financial and capital assistance. As a matter of law the FAA sections authorize any type of activity which is engaged in "the order to promote economic development." Certain areas are to be "emphasized" and certain factors are to be "taken into account," but the importance to be given to these factors is left to the discretion of the President.

Section 211. GENERAL AUTHORITY.

(a) FAA Sec. 211(a) - General Scope: The definition of activities authorized by the first sentence of FAA Sec. 211(a) is more general than the definition included in MSA Sec. 302. It authorizes assistance designed "to promote the economic development of less developed friendly countries and areas with emphasis upon assisting the development of human resources through such means as programs of technical cooperation and development." MSA Sec. 302 on the other hand set out a much more detailed definition which defined technical assistance as being "programs for the international interchange of technical knowledge and skills" which (1) had to be "designed to contribute primarily to the balanced and integrated development of the economic resources and productive capacities of economically underdeveloped areas," (2) could not be among (i) those activities authorized by the United States Information and Educational Exchange Act of 1948 "as are not related to economic development" or (ii) activities undertaken pursuant to the International Aviation Facilities Act or in the administration of areas occupied by the United States Armed Forces, and (3) were bilateral.

As examples of the general goals of development grants the SCFR referred to (1) the growth of institutions "that form the bases for economic development and progress"; (2) the raising of the "educational, technical, managerial, and professional levels of certain societies"; (3) the supplementing of social reform programs; (4) assistance in the creation of comprehensive development plans; and (5) the "development of the basic physical facilities that modern societies require." Specific areas referred to by the SCFR are (1) education, (2) health, (3) farmer cooperatives, (4) public administration, (5) agricultural extension services, (6) community development, (7) housing, and (8) transportation (See SCFR Rep. pp. 12-14).

Next page is Sec. 211  
(2)

Under FAA Sec. 636(f) development grants may be used for non-administrative expenses of AID in carrying out functions under development lending, under P.L. 480 and under the Act to provide for Assistance in the Development of Latin America and in the Reconstruction of Chile. Development grant funds would thus be available, for example, for salaries and travel expenses of technicians who work on development lending projects.

(b) FAA Sec. 211(a) - Restrictions: In conducting operations under Section 211 the President is directed to "take into account" six factors, several of which are similar to the factors included in FAA Sec. 201 described above. There was no directly comparable provision in the MSA. MSA Sec. 303 stated certain "prerequisites to assistance"\* but, with the exception of the recipient country's obligation to pay a "fair share" of the costs of a program, they are not referred to in the FAA.

Under Section 211 the President must "take into account" -

- (1) "Whether the activity gives reasonable promise of contributing to the development of educational or other institutions or programs directed toward social progress" This is not in FAA Sec. 201. The SCFR stated that "social progress" in this context "covers the improvement of living standards within the relatively poor but aspirant societies, and the development of those institutions that will give hope and purpose to the lives of the peoples who comprise such societies." It gave as examples education, health, farmers cooperatives, and public administration. (SCFR Rep. p. 13)
- (2) "The consistency of the activity with, and its relationship to, other development activities being undertaken or planned, and its contribution to realizable long-range development objectives." This is almost identical with FAA Sec. 201(b)(4).
- (3) "The economic and technical soundness of the activity to be financed." This is the same as FAA Sec. 201(b)(2) See also FAA Sec. 611 (formerly MSA Sec. 517), which is designed, among other things, to assure the economic

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\* In a TC program MSA Sec. 303 required the recipient (a) to pay a fair share thereof, (b) to provide information and give publicity thereto, (c) to coordinate such programs with similar programs; (d) to make effective use thereof; and (e) to cooperate with other nations involved therein.

and technical soundness of an activity and to this end requires in certain cases the completion of plans and cost estimates before funds are obligated.

- (4) "The extent to which the recipient country is showing a responsiveness to the vital economic, political, and social concerns of its people, and demonstrating a clear determination to take effective self-help measures and a willingness to pay a fair share of the cost of programs under this title." Except for the reference to "fair share", this is the same as FAA Sec. 201(b)(5). For a discussion of "fair share" see ICA M.O. 1005.1.
- (5) "The possible adverse effects upon the United States economy, with special reference to areas of substantial labor surplus, of the assistance involved." This is similar to FAA Sec. 201(b)(6). If the President finds that the assistance will have such adverse effects, the section requires that the assistance shall not be furnished. See FAA Sec. 604 and Sec. 620(d) for related provisions.
- (6) "The desirability of safeguarding the international balance of payments position of the United States." This is not in FAA Sec. 201.

Even though the HCFA referred to these factors as "legislative criteria" (HCFA Rep. p. 25) and the SCFR described them as "strict criteria", (SCFR Rep. p. 13), if a factor is taken into account and a negative conclusion is reached with regard to it, the assistance generally will not necessarily be barred thereby as a matter of law. One exception is the consideration of the impact on the U.S. economy which, if the effect is found to be substantially adverse, will act to bar the assistance. Also, as mentioned in connection with development loans, there will probably be a point at which negative conclusions regarding one or more of these factors would make impossible the basic judgment that the proposed activity will promote economic development.

In the past because of the requirements of MSA Sec. 303, it has been the practice of ICA not to furnish technical assistance until a diplomatic-level bilateral agreement was in effect containing provisions deemed to satisfy that section. Although there will in almost all cases continue to be reasons why AID may wish to conclude such agreements before assistance is furnished, this particular reason will no longer exist. As a matter of policy AID may continue to include some of the MSA Sec. 303 provisions in its bilaterals.

(c) FAA Section 211(a) - Terms and Conditions: The President shall determine the terms and conditions for development grants. Although such assistance will be furnished principally upon a grant basis, it may also be furnished on other terms such as loans. FAA Sec. 635(a) states, in fact, that all assistance under the FAA shall emphasize loans. It is expected that loans under this authority would in most cases be repayable in local currencies. FAA Sec. 635(g) sets out certain authorities regarding making of such loans. The use of local currency proceeds from loan repayments would be governed by FAA Sec. 612. Any dollar repayments would be deposited into Treasury miscellaneous receipts. In discussing the requirements of FAA Sec. 609 regarding counterpart the House members of the Conf. Comm. indicated that they expected counterpart (which as a matter of law is applicable only to supporting assistance funds) also to be deposited when commodities are made available for sale by recipient countries under development grants "except in unusual situations." (H. Conf. Comm. Rep. p. 58)

(d) Sec. 211(a) - Eligible Recipients and Beneficiaries: The beneficiaries of development grants are limited to "less developed friendly countries and areas", but FAA Sec. 635(b) provides that loans, grants and other arrangements may be entered into with "any individual, corporation, or other body of persons, friendly government or government agency whether within or without the United States." Thus as a matter of law it would be possible to enter into an agreement with a private U.S. firm to carry out activities in a less developed friendly country without entering into an agreement with that country. However, the current emphasis on country programming will make it advisable in all but exceptional cases to conduct all assistance activities pursuant to agreements with the recipient country.

Formerly technical assistance under MSA Sec. 302 was available for the benefit of "underdeveloped areas". For a discussion of the change to "less developed friendly countries and areas" see FAA Sec. 201(b) above.

(e) FAA Sec. 211(b) - Capital Facilities: FAA Sec. 211(b) provides that for recipients in the earlier stages of economic development AID should emphasize the development of education and human resources, and the furnishing of capital facilities for other purposes shall be given a lower priority "until the requisite knowledge and skills have been developed." The purpose of this section is related to but represents a substantial loosening of the restriction of MSA Sec. 305, which specified that equipment and commodities might be furnished with technical assistance funds only where necessary for "instruction or demonstration" purposes. The passage which gives a lower priority to

the furnishing of capital "facilities" is interpreted as not including within its scope the furnishing of capital commodities (e.g. machine tools) in a non-project assistance program. In addition, as the H. Conf. Comm. stated, Section 211(b) "does not inhibit such programs for the development of human resources as school construction and malaria eradication which go beyond the scope of technical cooperation or commodity programs designed to generate local currency to carry out human resources development projects.

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". . . although capital projects outside the field of human resources development in countries in the earlier stages of development should be given a lower priority for development grant financing, such capital projects are not altogether prohibited." (H. Conf. Comm. Rep. p. 50)

Cross References: (1) On counterpart see FAA Sec. 609; H. Conf. Comm. Rep. p. 58; ICA M.O. 704.6, (2) FAA Sec. 611 and FA Approp. Act 1962 Sec. 102 on completion of plans and cost estimates and computation of cost-benefit ratios are applicable to development grants. (3) FAA Sec. 618 requires, among other things, that economic assistance to Latin America (including development grants) be furnished in accordance with the principles of the Act of Bogota. (4) In contrast to technical assistance projects under the Mutual Security Appropriation Act of 1961, the FA Appropriation Act 1962 does not contain a requirement that development grant projects must first be justified to Congress before they may be initiated. (5) FAA Sec. 608 authorizes the use of development grant funds to establish a revolving fund for the purpose of advance acquisitions of excess and other property. (6) See FAA Sec. 620 for limitations on eligibility of recipients. (7) FAA Sec. 604 prohibits procurement outside the U.S. without a Presidential determination. (8) FA Approp. Act 1962 Sec. 105 prohibits the use of FAA funds for pension or certain other similar payments to past or present military personnel of recipient countries. (9) FA Approp. 1962 Sec. 601 prohibits the use of FAA funds for publicity or propaganda purposes within the U.S. not heretofore authorized by Congress. (10) For waiver authority applicable to development grants, see FAA Secs. 614(a) and 633. (11) FAA Sec. 635(f) authorizes the use of development grant funds in carrying out certain functions under development lending, P.L. 480 and the Latin American Development and Chilean Reconstruction Act.

Section 212. AUTHORIZATION.

FAA Sec. 212 authorizes no-year appropriations in the amount of \$380,000,000 to the President for use beginning in FY 1962 to carry out the purposes of Section 211. Of this amount \$296,500,000 were appropriated to remain available during FY 1962 only. Portions of this amount are earmarked for specific purposes with the result that such funds cannot be used for any other purpose. Additional non-earmarked funds may also be so used but if lesser amounts are used, the unused portion of the earmarking is lost.

Technical assistance funds obligated in FY 1961 or earlier fiscal years and deobligated in FY 1962 may be used pursuant to the development grant authority on the basis of FA Approp. Act 1962 Section 101. See also FAA Sec. 451 (contingency funds) and FAA Sec. 610 (transfer authority). Funds appropriated pursuant to FAA Sec. 212 (not including contingency funds or funds transferred from other categories of assistance) are not subject to the restriction stated in FA Approp. Act Sec. 104 limiting the amount of any appropriation which may be obligated and/or reserved during the last month of availability to 20% thereof.

Section 213. ATOMS FOR PEACE.

FAA Sec. 213 is based upon MSA Section 419(a). It authorizes the President to use up to \$2,000,000 of the development grant funds made available pursuant to FAA Sec. 211 to promote the peaceful uses of atomic energy outside the U. S. Rather than being exclusive, this authorization is explicitly "in addition to other funds available for such purposes" (same as MSA). Under the MSA a special appropriation was authorized for this purpose, and, in addition, technical assistance funds were used for certain training and demonstration projects in the atomic energy field. Although previously approved reactor programs will continue to be funded, no additional reactor programs abroad are planned. Instead, the intention is to shift the emphasis of the program by providing laboratory, field, and teaching equipment, by improving training in basic and applied nuclear technology, and by continuing research activities. (HCFA Rep. pp. 26-27; SCFR Rep. p. 14)

Section 214. AMERICAN SCHOOLS AND HOSPITALS ABROAD.

FAA Section 214(a) is based upon MSA Sec. 400(c). It authorizes the President to use development grant funds for assistance to foreign schools and libraries which were founded or are sponsored by U. S. citizens and which serve as study and demonstration centers for ideas and practices of the United States. A proposal to make American-sponsored hospitals eligible for dollar assistance was not adopted. The cumulative total of \$20 million contained in the MSA has been removed. The HCFA stated that "priority" will be given to those institutions most likely to make a

"direct and immediate contribution to economic development such as the American University at Beirut, including its medical school, and its affiliated secondary school, the International College" (HCFA Rep. p. 27).

FAA Sec. 214(b) which is also derived from MSA Sec. 400(c), authorizes the President to use foreign currencies accruing to the U. S. under any Act without regard to the provisions of the Battle Act (22 U.S.C. 1611 et. seq.), for American-sponsored schools and libraries and in addition hospitals outside the U. S. which were founded or are sponsored by U. S. citizens and which serve as centers for medical treatment, education and research. An appropriation is necessary for these purposes because this section is not exempted from the requirements of Sec. 1415 of the Supplemental Appropriation Act of 1953. The FA Approp. Act 1962 appropriated \$100,000 pursuant to this section to purchase foreign currency for an American-sponsored school in Poland.

Section 215. LOANS TO SMALL FARMERS.

With minor exceptions FAA Sec. 215 is identical to MSA Sec. 421. It expresses the policy of the U. S. to strengthen the economies of less-developed friendly countries particularly through loans of foreign currency to small farmers. Although the first sentence expresses a policy only, the second adds limitations of \$25,000 to loans to any association at any one time and of \$10,000,000 for the unpaid balance of all loans made under the section. On the other hand, Congress made it quite clear (HCFA Rep. p. 28; H. Conf. Comm. Rep. p. 51) that it did not intend this section to restrict loans made under any other authority. Consequently, since this section creates no authority of its own, it should be read only as a statement of policy.

Section 216. VOLUNTARY AGENCIES.

FAA Sec. 216(a) is based upon MSA Sec. 409(a). It authorizes the President to use development grant funds to pay transportation charges from U. S. ports to ports of entry abroad (or to "points" of entry if the country is landlocked) on relief and rehabilitation shipments to friendly peoples by the American Red Cross and by U. S. voluntary non-profit relief agencies registered with and approved by the Advisory Committee on Voluntary Foreign Aid.

FAA Sec. 216(b) is based upon MSA Sec. 409(b) and states that "where practicable" the President shall make arrangements with the receiving nation for free entry of such shipments and for the payment by that nation of the internal shipping costs. The voluntary agency itself may make such arrangements by itself rather than relying upon the President to do so (HCFA Rep. p. 29). Whereas under the MSA only shipments for the relief

or rehabilitation in "nations and areas eligible for assistance," Sec. 216 applies to shipments for the relief and rehabilitation "of friendly peoples" thus broadening the class of eligible recipients (see H. Conf. Comm. Rep. 51).

Development grant funds are to be used for this purpose rather than having a separate appropriation as was necessary under MSA Sec. 409. One MSA provision which no longer applies is MSA Sec. 409(d) which authorized the use of any MSA funds to pay ocean freight charges on shipments of surplus agricultural commodities (including P. L. 480). This section became largely superfluous after the subsequent enactment of Sec. 203 of P. L. 480, title II, which permitted the use of P. L. 480 funds to pay transportation costs of commodities shipped under that title and title III (title I shipments being covered by Sec. 103 of P. L. 480).

Cross References: See ICA Regulation 2 (M.O. 106) for procedures concerning the application of and exceptions to Sec. 216. See ICA Regulation 3 (M.O. 107) which sets out procedures for registration of agencies with the Advisory Committee on Voluntary Foreign Aid.

## TITLE III - INVESTMENT GUARANTIES

[The following discussion is in a somewhat different format from the other parts of the Section-by-Section Analysis and is an updated version of a paper presented to the House Foreign Affairs Committee during the 1961 Congressional Presentation.]

Section 221. GENERAL AUTHORITYSection 221(a)

"Section 221. General Authority - (a) In order to facilitate and increase the participation of private enterprise in furthering the development of the economic resources and productive capacities of less developed friendly countries and areas, ..."

This substantially repeats the introductory language of MSA Sec. 413(b) and Sec. 413(b)(4). The words "encourage and facilitate" have been changed to "facilitate and increase," but not with intent to change the meaning. The purpose has been stated in terms of furthering economic development, rather than "achieving any of the purposes of this Act," but this too is not a change of substance, since other language of the MSA Sec. 413(b)(4)(A) made clear that guaranties were to be issued thereunder only for economic development purposes.

"... the President is authorized to issue guaranties as provided in subsection (b) of this section of investments in connection with projects, including expansion, modernization, or development of existing enterprises, ..."

This does not differ in substance from the comparable introductory language of MSA 413(b)(4). It omits the language calling for guaranties to be made "through an agency responsible for administering non-military assistance under this Act," and the language cutting off guaranty-issuing authority on June 30, 1967. The MSA provision for prescribing rules and regulations is covered elsewhere in the FAA (see FAA Sec. 621(a)).

The FAA does not specify that investments to be guaranteed must be investments in new securities or new productive facilities, but the legislative history of the original enactment so indicated, and the guaranty authority has generally been construed to be so limited. This accounts for the "waiver letter" or "letter of assurance" procedure which has been developed in the administration of the program, by which an investor who applies for guaranties is

Next page is Sec. 221(a)  
(2)

assured that he will not be prejudiced if he goes ahead and makes his investment before the guaranty is actually issued.

While purchases of outstanding securities or going businesses do not, by themselves, ordinarily afford a basis for issuing guaranties, there are several related areas where the new investment concept is not considered to preclude issuance of guaranties.

For example, where the investor buys up an existing enterprise with a view to making a substantial additional investment to modernize or expand the enterprise, not only the sums spent on expansion or modernization (which are specifically authorized to be covered), but also sums spent to acquire the shell, have sometimes been treated as guarantiable. Also, where public offering of a foreign enterprise's new securities is contemplated, and the marketability of such securities depends on availability of guaranty protection to each successive purchaser, the new investment concept is not considered to prevent issuance of guaranties which will run with the security. (Practice under the MSA allowed for the assignment of guaranties, even though, at the time of assignment, the investment is no longer a new one.)

"... in any friendly country or area with the government of which the President has agreed to institute the guaranty program."

This substantially repeats the MSA language. By itself, the provision does not require that the agreement take any particular form, or have any particular content beyond agreement to institute the program. Its purpose is satisfied by any manifestation that the country is willing, in a particular case, or in general, that the program be used in an effort to induce the making of investment in the country. (The fixed turnover-of-assets and subrogation-to-claims requirements which have been in MSA Sec. 413(b)(4)(C) have been interpreted, however, to imply the necessity for a bilateral agreement which would commit the project country to recognize and make effective such turnover or subrogation. With the more flexible turnover/subrogation provisions of the FAA (see FAA Sec. 221(d)), the form and content of the bilateral agreement can be correspondingly more flexible.)

"... and each project shall be approved by the President."

This repeats the MSA requirement for project approval by the President, but deletes the requirement for host government approval. Authority to approve on behalf of the President is delegated to the program's administrators, and, accordingly, this requirement does not materially affect the issuance of guaranties, though it may serve to make clear that no investor

Next page is 221(a)  
(3)

11/21/61

Section 221(a)  
(3)

has an automatic right to receive guaranties.

Host government project approval, while eliminated as a statutory requirement, remains as a requirement of existing bilateral agreements to institute the guaranty program. Bilateral agreements continue to be required but need not in the future contain the existing form of approval requirements.

". . . The guaranty program authorized by this title shall be administered under broad criteria, . . ."

This repeats the MSA injunction to administer the program imaginatively, but deletes the mandate to use the program "to the maximum practicable extent."

Next page is Sec. 221(b)  
(1)

Section 221(b)

"(b) The President may issue guaranties to United States citizens, or corporations, partnerships, or other associations created under the laws of the United States or of any State or territory and substantially beneficially owned by United States citizens, as well as any wholly-owned foreign subsidiary of any such corporation."

An Executive Branch proposal to delete the requirement of the MSA that business entities be United States-chartered, as well as United States-owned, was not adopted--except in the case of wholly-owned subsidiaries. Thus, a United States citizen-owned corporation chartered in a less developed country, or in a third country, and investing in a less developed area, may not obtain an investment guaranty unless it is a wholly-owned subsidiary of a United States-chartered, United States-owned corporation. In such a case, however, the guaranty might not only cover the subsidiary's investment in other enterprises, but reinvestment of its earnings in new productive facilities directly owned and operated by it.

It is possible that wholly-owned subsidiaries employed primarily for purposes of United States income tax avoidance will not receive guaranties. This policy question has not yet been resolved.

Proof of compliance with the "substantially beneficially owned" test is not necessarily made a condition precedent to the issuance of guaranties. Rather, responsibility for compliance is placed on the investor, which covenants that it meets and will continue to meet the requirement. Actual investigation is then generally left until such later time as a claim under the guaranty may be filed, except where the administrators are on notice that there may be a question as to whether the investor meets the test. In applying the test with respect to publicly-held business entities, practical necessity requires treating a United States mailing address as some evidence of United States citizenship.

". . .(1) assuring protection in whole or in part against any or all of the following risks:"

This is comparable to the MSA language, except that it specifies that the guaranty need not provide full protection against the risks covered, should it ever happen that an investor wants, for a reduced fee, to obtain partial protection.

". . .(A) inability to convert into United States dollars other currencies, or credits in such currencies, received as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof,"

Next page is Sec. 221(b)  
(2)

This is almost identical to the language of the convertibility provision of MSA Sec. 413(b)(4)(B)(i). It has been on the books since 1948, and is construed to authorize the transfer or conversion of local currency investment proceeds into dollars when such transfer is blocked by law or by administrative practice, or when it is permitted only at discriminatory rates of exchange. There are exceptions for cases where the investor has no right to expect different treatment, and depreciation and devaluation of local currency are not covered. The current standard forms of convertibility guaranties for equity and loan investments (like those for other types of coverage) have not varied greatly over the years, though they are continuously subject to variation in the light of experience, and to adaptation to fit the circumstances of particular cases.

"...(B) loss of investment, in whole or in part, in the approved project due to expropriation or confiscation by action of a foreign government,..."

This is in substance the same as the MSA expropriation provision. Note, however, that "by action of a foreign government" has been substituted for "by action of the government of a foreign nation." This is intended to make clear that expropriatory action by provincial and municipal governments, as well as by national governments, is covered.

This is the second oldest type of guaranty coverage authorized; it dates from 1950. Events in Cuba have tended to make it of increasing interest, though convertibility guaranties still lead the field. Expropriation is defined with some care and at considerable length in the guaranty contracts. In general, it means governmental action which prevents the enterprise from controlling its property, or the investors from controlling or disposing of their investments. (In the case of loan investments, such action must also prevent payment of principal or interest on the loan and be taken with expropriatory intent.)

There are exceptions for legitimate regulatory and revenue-producing actions and other cases in which such action is brought on by the investor, or otherwise to be expected. Regulatory or revenue-producing measures which are adopted with intent to divest, and which have the required effect upon control of the business property or the investment are considered to be expropriatory. In a few cases where investors have had contractual relationships directly with the host governments, breach of contract

11/21/61

Section 221(b)  
(3)

by the host government which materially interferes with the operation of the project (i.e., is expropriatory in effect) has been included within the definition of expropriation. (See the confirmatory definition in Sec. 223(b).)

"... and (C) loss due to war, revolution, or insurrection."

The coverage of war risks authorized hereunder dates from 1956; the rest of the provision is new. Coverage of civil strife accompanying war, revolution and insurrection and of damage resulting from sanctions were proposed by the Executive Branch, but rejected by the Congress.

The war risk guaranty authority has as yet been little used--only 5 contracts totalling a little over \$1 million had been issued as of 1961. War risk guaranties cover only damage to physical property, on a coinsurance basis, and the premium is subject to adjustment in the light of experience for the later years of the contract.

Presumably the revolution and insurrection coverage now authorized will be added to new war risk guaranty contracts, since there is a considerable area of overlap in all three coverages--probably at no increase in fee.

"... Provided, That the total face amount of the guaranties issued under this paragraph (1) outstanding at any one time shall not exceed \$1,000,000,000; ..."

This repeats in substance the provisions of the MSA with respect to "ICA-type" guaranties. Note that the ceiling is only meaningful when funds available for obligation in connection with guaranties would otherwise be sufficient to permit issuance of guaranties in excess of the ceiling. Historically this ~~has~~ usually not been the case. Outstanding guaranties were \$472 million as of June 30, 1961, and available reserves of \$60 million, using the present 25% reserve for each guaranty, would permit issuance of \$240 million additional, for a total of just over \$700 million. Only if reserves were set extremely low would the ceiling figure be approached.

"... and (2) where the President determines such action to be important to the furtherance of the purposes of this title, assuring against loss of not to exceed 75 per centum, any investment due to such risks as the President may determine, upon such terms and conditions as the President may determine:..."

Next page is 221(b)  
(4)

This represents a modification of the DLF guaranty authority under MSA Sec. 202(b). It requires an express determination of importance (delegated to the Administrator) before the authority can be used. It continues the MSA loan repayment guaranty authority, but limits such guaranties to not more than 75% of the principal of any loan. It also authorizes for the first time all-risk guaranties of equity investments, subject to the same 75% limitation. It is expected that such guaranties will more commonly not exceed 50% of the amount of the investment, and that this authority will be used on a frankly experimental, high premium, share-the-loss basis, for projects of high priority. Such guaranties are intended to assure businessmen a fixed, though limited, recovery, in the event the project fails for any reason, and thus to meet the objection that it is often impossible to be certain, without litigation, what the scope of the protection is under specific risk guaranties.

" . . . Provided, That guaranties issued under this paragraph (2) shall emphasize economic development projects furthering social progress and the development of small independent business enterprises, and no such guaranty shall exceed \$10,000,000: Provided further, That no payment may be made under this paragraph (2) for any loss arising out of fraud or misconduct for which the investor is responsible: . . ."

These limitations were written into the all-risk guaranty authority at the instance of the Senate Foreign Relations Committee. The social progress--small business limitation does not require that all guaranties under this authority fall into one category or the other.

" . . . Provided further, That the total face amount of the guaranties issued under this paragraph (2) outstanding at any one time shall not exceed \$90,000,000."

This is derived from the \$100 million MSA ceiling with respect to "DLF-type" guaranties; \$10 million was set aside in Sec. 224 and earmarked for special all-risk guaranties for Latin American housing, leaving \$90 million for this authority. Note that while the ceiling on the total guaranty-issuing authority under Sec. 221(b) is \$1.09 billion, the legislation does not provide for any increase in available reserves, and therefore guaranties can be entered into under this all-risk authority only at the cost of further limiting the amount of specific-risk guaranties which may be entered into.

" . . . Provided further, That this authority shall continue until June 30, 1964."

This limitation, inserted at the instance of the House Foreign Affairs Committee, emphasizes the experimental nature of the authority.

Next page is Sec. 221(c)  
(1)

11/21/61

Sec. 221 (c)  
(1)

Section 221(c)

"(c) No guaranty shall exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the President plus actual earnings or profits on said investment to the extent provided by such guaranty, nor shall any guaranty extend beyond twenty years from the date of issuance."

This substantially repeats the provision of MSA §413(b)(4)(D), except that the phrase "dollar value, as of the date of investment, of the investment made" is substituted for the phrase "amount of dollars invested" in the interest of clarity, since the guaranty statute obviously contemplates investments in kind as well as investments in currency.

Next page is Sec. 221(d)  
(1)

33

Section 221(d)

"...(d) The President shall make suitable arrangements for protecting the interests of the United States Government in connection with any guaranty issued under section 221(b), including arrangements with respect to the ownership, use, and disposition of the currency, credits, assets, or investment on account of which payment under such guaranty is to be made, and any right, title, claim, or cause of action existing in connection therewith."

This replaces the fixed turnover/subrogation requirement of MSA Sec. 413(b)(4)(C). Such provision has been construed to require that our investment guaranty agreements, which institute the guaranty program, contain specific provisions designed to make such turnover and subrogation effective - e.g., recognizing United States ownership and agreeing to United States use on a non-discriminatory basis of local currency turned over to the United States upon payment of convertibility claims; recognizing United States ownership of property turned over to it, and claims to which it is subrogated, in connection with expropriation guaranties, and agreeing to direct negotiation and arbitration with respect to such claims; agreeing to most-favored-nation treatment for the United States and its nationals in the distribution of any war damage payments, reparations, etc., with respect to property turned over in connection with a warrisk guaranty.

International law doctrines, and constitutional and statutory law provisions, have sometimes prevented less-developed countries from agreeing to these provisions, especially in connection with expropriation contracts, and especially in Latin America. For example, constitutional or statutory provisions in Latin American countries sometimes bar ownership of real property by a foreign government, so that the governments of such countries cannot commit themselves to recognize turnover of such property to the United States. Similarly, the Calvo doctrine is considered by many such countries to inhibit them from recognizing United States subrogation to claims, or agreeing to negotiate and arbitrate such claims.

The new statutory provision, by providing simply for suitable arrangements to protect the interests of the United

Next page is Sec. 221(d)  
(2)

11/21/61

Sec. 221(d)  
(2)

States in such matters as turnover and subrogation, is intended to permit flexibility, both in bilateral agreements and in the investment guaranty contracts themselves, within the limits of the stated criterion. Thus where legal obstacles in less developed countries inhibit their entry into standard form investment guaranty bilateral agreements it would allow exploration of alternative arrangements, suited to the particular circumstances of the case, for issuing investment guaranties without windfall to investors or unreasonable risk of loss to the United States. It would also allow issuances of guaranties in advance of final agreement with the host country on United States turnover/subrogation rights, where the administrators determined this to be important to inducing the making of the investments, and determined that satisfactory final agreement on such rights could reasonably be expected within a reasonable period of time following issuance of such guaranties. Where, however, the host country has not indicated even general agreement to institution of the guaranty program (pursuant to section 221(a)), a Presidential waiver of compliance with such requirement pursuant to section 614 would be required.

Next page is Sec. 222  
(1)

Section 222. GENERAL PROVISIONS

"General Provisions. (a) A fee shall be charged for each guaranty in an amount to be determined by the President...."

This replaces as unnecessary the MSA provision which sets a ceiling of 1% per annum on fees for convertibility guaranties and 4% for expropriation and war risk guaranties. In actual practice fees for each type of guaranty have for some time been fixed at 1/2% per annum for current coverage, and 1/4% for standby coverage. (At one time fees as high as 1% were charged.) Fee income to June 30, 1961 was in excess of \$7 million.

Under the FAA, fee schedules will not necessarily remain the same. Different fee provisions may be developed for different combinations of guaranties, as, for example, where the investor seeks protection against several different types of risk, not more than one of which is likely to mature. Consideration may also be given to varying fees according to the duration of the guaranty, or the place of the investment, or to making the fees subject to revision (prospectively) during the life of the guaranty.

"... In the event the fee to be charged for a type of guaranty authorized under section 221(b) is reduced, fees to be paid under existing contracts for the same type of guaranty may be similarly reduced."

This repeats the substance of a provision of MSA Sec. 413(b)(4)(E). It has not in fact been used, but such reduction with respect to outstanding guaranties can only be accomplished, should it appear desirable to do so, if it is specifically authorized by statute. See opinion of the GAO (B-124389, July 29, 1955, 35 C.G. 56).

"... (b) All fees collected in connection with guaranties issued under section 221 (b), under sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and under section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (22 U.S.C. 1509(b)(3)) (exclusive of fees for informational media guaranties heretofore or hereafter issued pursuant to section 1011 of the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1442) and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended), shall be available for meeting management and custodial costs incurred with respect to currencies or other assets acquired under guaranties made pursuant to section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), and shall be available for expenditure in discharge of liabilities under guaranties made pursuant to such sections, until such time

as all such property has been disposed of and all such liabilities have been discharged or have expired, or until all such fees have been expended in accordance with the provisions of this section."

The fiscal provisions of this Title from Sec. 222(b) on represent an effort to assemble in one place the fiscal provisions applicable to the present and all predecessor guaranty programs (save informational media guaranties), and to express more clearly the intent of such provisions. The exception for informational media guaranties will not hereinafter be specifically repeated each time "all guaranties" are referred to.

The above section simply provides for the continuing availability of fee income from all outstanding guaranties to pay claims under guaranties. It also provides (this is the principal substantive addition to the fiscal provisions of the guaranty legislation) that fee income may be used to pay management and custodial costs incurred with respect to assets turned over to the United States, should that ever become necessary.

"...(c) In computing the total face amount of guaranties outstanding at any one time for purposes of paragraph (1) of section 221(b), the President shall include the face amounts of outstanding guaranties theretofore issued pursuant to such paragraph, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended, but shall exclude informational media guaranties."

This provides that all outstanding guaranties under previous programs shall be counted against the \$1 billion total for guaranties authorized under FAA Sec. 221(b)(1). This includes, largely for convenience, certain "DLF-type" guaranties issued under MSA Sec. 202(b).

"... (d) Any payments made to discharge liabilities under guaranties issued under section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), shall be paid first out of funds specifically reserved for such payment pursuant to the proviso to the second sentence of section 222(e) and thereafter shall be paid out of fees referred to in section 222(b) as long as such fees are available, and thereafter shall be paid out of funds, if any, realized from the sale of currencies or other assets acquired in connection with any such guaranties as long as such funds are available, and finally shall be

paid out of funds realized from the sale of notes issued under section 413(b)(4)(F) of the Mutual Security Act of 1954, as amended, and section 111(c)(2) of the Economic Cooperation Act of 1948, as amended."

This simply provides that ordinarily guaranty claims are to be paid first from fee income (in excess of \$7 million as of June 30, 1961), second from income from disposition of assets (none as of June 30, 1961), and only after these sources are exhausted from the proceeds of notes issued under the Economic Cooperation Act of 1948 and the MSA (just under \$200 million). An exception is made to the extent that specific funds have been set aside for the payment of certain guaranty claims-- i.e., the pre-July 1, 1956 guaranties for which the full face amount was obligated and set aside as a reserve for payment, and the "DLF-type" guaranties for which 50% of the face amount has been obligated and set aside as a reserve from which payment is to be drawn. (The Attorney General has ruled that such sum is to be held available for immediate payment, and the balance of the claim constitutes an obligation of the United States Government for the payment of which the government's full faith and credit is pledged. This section provides that such balance is to be paid, in the order prescribed, out of the other un-earmarked assets remaining available for payment of claims.)

"... (e) All guaranties issued prior to July 1, 1956 (exclusive of informational media guaranties), all guaranties issued under section 202(b) of the Mutual Security Act of 1954, as amended, may be considered, and all other guaranties shall be considered for the purposes of section 3679 (31 U.S.C. 665) and section 3732 (41 U.S.C. 11) of the Revised Statutes, as amended, as obligations only to the extent of the probable ultimate net cost of the United States Government of all outstanding guaranties. Funds obligated in connection with guaranties issued under section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended, and section 111(b)(3) of the Economic Cooperation Act of 1948, as amended (exclusive of informational media guaranties), shall constitute a single reserve, together with funds available for obligation hereunder but not yet obligated, for the payment of claims under all guaranties issued under such sections: Provided, That funds obligated in connection with guaranties issued prior to July 1, 1956, and guaranties issued under section 202(b) of the Mutual Security Act of 1954, as amended, shall not, without the consent of the investor, be available for the payment of claims arising under any other guaranties. Funds available for obligation hereunder shall be decreased by the amount of any payments made to discharge liabilities, or to meet management and custodial costs incurred with respect to assets acquired, under guaranties issued pursuant to section 221(b) of this part, sections 202(b) and 413(b)(4) of the Mutual Security Act of 1954, as amended and section 111(b)(3) of the Economic Cooperation Act of 1948,

as amended (exclusive of informational media guaranties), and shall be increased by the amount obligated for guaranties as to which all liability of the United States Government has been terminated, and by the amount of funds realized from the sale of currencies or other assets acquired in connection with any payments made to discharge liabilities, and the amount of fees collected, under guaranties issued pursuant to such sections (exclusive of informational media guaranties)."

This section covers the obligations recorded and reserves established in connection with guaranties. Prior to July 1, 1956, the full face amount of each guaranty was obligated at the time of issuance, and such sum has since been considered as a reserve available only for the payment of such guaranty. The same is true of "DLF-type" guaranties issued under section 202(b) of the Mutual Security Act of 1954, as amended, except that the amount obligated and reserved is 50% of the face amount of the guaranty. All other guaranties have been treated as obligations on the basis of a judgment as to the "probable ultimate net cost" of the program as a whole (for some time fixed at 25% of face amount) and the amount obligated has not been treated as a reserve available only for the payment of each such guaranty, but simply as a part of the totality of resources, both obligated and unobligated, which are available as a single reserve, for the payment of all claims in the order in which they are presented. Thus with respect to such guaranties, the office of the obligation is not to create a special reserve, but solely to restrict pro tanto the authority to write additional guaranties which will constitute additional potential claims against the totality of available reserves.

The provision also specifies that any guaranty claims paid, or management or custodial costs paid, shall reduce the amounts available for obligation in connection with new guaranties, and any income or releases of obligations shall increase such amounts.

Section 223. DEFINITIONS.

"Definitions. - As used in this title --

(a) The term "investment" includes any contribution of capital commodities, services, patents, processes, or techniques in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such projects, and (4) the furnishing of capital commodities and related services pursuant to a contract providing for payment in whole or in part after the end of the fiscal year in which the guaranty of such investment is made."

This section repeats, with nonsubstantive changes in language, the MSA definition of investment, which indicates the term includes contributions in kind as well as in cash, on any terms which imply a contribution to development, and includes also sales of capital goods on long credit terms. Few guaranties have been issued with respect to the latter type of investment, but authority to issue guaranties in such cases, if other agencies do not, seems useful. The concept of investment has also been construed to include guaranties of repayment given by investors on loans made by financial institutions.

"...(b) the term "expropriation" includes but is not limited to any abrogation, repudiation, or impairment by a foreign government of its own contract with an investor, where such abrogation, repudiation, or impairment is not caused by the investor's own fault or misconduct, and materially adversely affects the continued operation of the project."

This ~~definition~~ recognizes that breach of contract by a host government may be expropriatory, but limits such treatment to cases where the breach is not investor-induced, and is so serious in its effect as to cause the investor to be willing to abandon the project and be taken out of the investment.

Section 224. HOUSING PROJECTS IN LATIN AMERICAN COUNTRIES

"(a) It is the sense of the Congress that in order to stimulate private home-ownership and assist in the development of stable economies, the authority conferred by this title should be utilized for the purpose of assisting in the development in the American Republics of self-liquidating pilot housing projects designed to provide experience in rapidly developing countries by participating with such countries in guaranteeing private United States capital available for investment in Latin American countries for the purposes set forth herein.

"(b) In order to carry out the purposes set forth in subsection (a), the President is authorized to issue guaranties assuring against the risks of loss specified in paragraph 221(b)(2) of investments made by United States citizens, or corporations, partnerships, or other associations created under the law of the United States or of any State or territory and substantially beneficially owned by United States citizens in pilot or demonstration private housing projects in Latin America of types similar to those insured by the Federal Housing Administration and suitable for conditions in Latin America. The total face amount of guaranties issued under this section outstanding at any one time shall not exceed \$10,000,000.

"(c) The provisions of section 222(a), (b), (d), and (e) shall be applicable to guaranties issued under this section in the same manner and to the same extent as they apply to guaranties issued under section 221(b)(2)."

This authority represents an earmarking of \$10 million of the \$100 million all-risk guaranty authority originally requested by the Executive Branch for Latin American housing. It does not mean that the \$90 million all-risk authority of Sec. 221(b)(2) may not also be used for housing investments, in as well as out of Latin America. However, Sec. 224 housing guaranties are subject to somewhat different requirements. The investments guaranteed must comply with the various elements of the statement of purpose in Sec. 224(a) (notably that the investment be in a "rapidly developing" country which participates in the guaranty), and the projects must be similar to those insured by FHA and suitable for conditions in Latin America. On the other hand, Sec. 224 does not require that there be any bilateral agreement to institute the guaranty program with the project country, or "suitable arrangements to protect the United States Government interest," and does not limit the duration of the guaranty to 20 years. Neither does it limit the guaranty to 75% of the investment.

Most of these differences are more apparent than real. As a practical matter, Sec. 224 guaranties will not exceed 75% of the investment, in deference to the Conference Committee Report which states an understanding to this effect (H.Conf. Comm. Rep. p. 53).

11/21/61

Section 224  
(2)

And rapidly developing countries are probably no different from less developed countries, except that some of the latter may not be included in the former. Again, while bilateral agreements are not required, host country participation in the guaranty will probably cover much of the same ground. And finally, most of the Sec. 224 requirements will be treated as applicable to comparable Sec. 221(b)(2) guaranties. In the last analysis, therefore, availability of Sec. 224 and Sec. 222(b)(2) guaranties of housing investments in Latin America is not likely to differ much.

Next page is Section 231

42

TITLE IV - SURVEYS OF INVESTMENT OPPORTUNITIES

This title is new. It provides specific authority for stimulating the exploration by operating companies of investment possibilities in less developed areas, other than in extractive industries. This authority is in addition to other authorities in the FAA (e.g., development grants) pursuant to which feasibility studies may be undertaken for private investment (either U. S. or local) or for other projects to be financed by AID. One difficulty with such other authorities has been that the policy followed has limited the contracting of investment studies to firms that would not benefit directly from the final project. Also partly because of policies favoring competition, there has been no way to respond positively to the initiative of a private company that would like to explore the feasibility of a possible investment abroad but does not feel it is justified, on a purely business basis, in spending the money for the needed study. To fill this gap, under the new authority, preference will be given, where possible, to contractors who indicate a positive interest in undertaking the investment to be studied (who may, however, employ as subcontractors, professional organizations in a manner consistent with their usual practice). (See HCFA Rep. pp. 38-40; SCFR Rep. pp. 17-18).

Section 231. GENERAL AUTHORITY.

In order to encourage and promote the undertaking by private enterprise of surveys of investment opportunities, other than surveys of extraction opportunities (defined in FAA Sec. 233(b)), FAA Sec. 231(a) authorizes the President to "participate in the financing" of such surveys by certain persons (defined in FAA Sec. 233(a)) in less developed friendly countries and areas. U. S. Government participation in such financing will be on such terms and conditions as the President may determine, except that such participation may not exceed 50% of the total cost of any such survey.

Within this broad authority the approach to terms and conditions at the outset will be experimental. They may vary depending upon whether the initiative for the survey comes from the U. S., from the recipient government, or from the private firm involved. If AID takes the initiative to seek out a potential qualified U. S.-investor and encourage its consideration of making a desired investment, the terms and conditions might be comparatively lenient. Or the funds might be used for contributions to programs of recipient governments aimed at increasing private investment, carried out through development banks and similar institutions; in this instance the recipient government might contribute matching funds and agree that the surveys to be ultimately financed would satisfy Sec. 231. Or if the initiative came from the prospective investor, this authority would permit a variety of approaches: for example, AID might charge a non-refundable fee (e.g., 10% of the U. S. commitment) and would only

pay the agreed percentage of the survey cost if the investor decided not to invest (i.e., in a sense, the investor would have an option to sell the study to the U. S.). The fees, in cases in which the U. S. did not have to pay its share because the investment was in fact made, would probably be deposited in Treasury Miscellaneous Receipts. (See HCFA Rep. p. 39.) Difficult problems in this connection would be the definition of "making the investment," and how to handle the company which announces that it does not wish to make the investment and then receives the U. S. payment of up to 50%, but does in fact participate in the investment indirectly through affiliates, relatives, key personnel, and other similar means.

FAA Sec. 231(b) provides that if a person who has undertaken an investment survey determines, within a period of time to be determined by the President, not to undertake, directly or indirectly, the investment opportunity surveyed, such person shall deliver to the President a professionally acceptable technical report regarding the matters explored. Such report shall become the property of the U. S., to be disposed of or used as it deems best by sale or otherwise. The U. S. Government will also be entitled to have access to and obtain copies of, all subordinate documents and other materials connected with the survey.

Section 232. AUTHORIZATION.

FAA Sec. 232 authorizes a no-year appropriation not to exceed \$5,000,000 for use beginning in FY 1962 to carry out the purposes of this title. The FA Approp. Act 1962 appropriated \$1,500,000 to be available until June 30, 1962, for this purpose.

Section 233. DEFINITION.

In defining the term "person," FAA Sec. 233(a) defines the class eligible for financing under Secs. 231 and 232 as (1) U. S. citizens, or (2) any corporation, partnership, or other association "substantially beneficially owned" by U. S. citizens. Senate language conforming the definition to that in investment guaranties requiring that business entities must also be U. S.-chartered was not adopted (H. Conf. Comm. Rep. p. 53), but it is not contemplated that this authority will normally be used with respect to foreign-chartered corporations.

The Executive Branch proposed here, as in the case of investment guaranties (Secs. 221-224), that any firm be eligible in which "the majority beneficial interest is held by U. S. citizens." This was changed to "substantially beneficially owned" by the Conf. Comm. "in the belief that they were substantially identical." (H. Conf. Comm. Rep. p. 53.)

10/17/61

Secs. 231-233  
(3)

FAA Sec. 233(b) defines "survey of extraction opportunities," a category which is excluded from financing under FAA Secs. 231 and 232. Our interpretation of the legislative history is that clearly the only category of surveys excluded are surveys which deal solely with extraction. Or, in other words, the type of investment excluded is that which goes no further than the extraction and preparation of a raw material to the first stage of commercial marketability. Any survey which is concerned with a more advanced processing or fabrication of such materials would be eligible under Secs. 231 and 232. Also, any survey which includes both extractive and non-extractive elements would be eligible so long as the non-extractive element was not trivial.

Next page is Sec. 241

45

10/17/61

Sec. 241

TITLE V - DEVELOPMENT RESEARCH

Section 241. GENERAL AUTHORITY.

FAA Sec. 241 is new. It authorizes the President to use development lending, development grant, international organization, investment survey, supporting assistance and contingency funds authorized under the FAA (i.e., any "funds made available for" FAA Part I) "to carry out programs of research into, and evaluation of, the process of economic development in less developed friendly countries and areas." The SCFR states that it is expected that not more than \$20 million will be expended on this program, and that one of the major purposes is to relate research more directly to specific problems than is now the case (SCFR Rep. p. 18). Research projects may be undertaken mainly by contract with universities and other research institutions and agencies, but some work will be done directly to service AID's regional bureaus. The work will involve research in both the natural and the social sciences (e.g., "inter-relationships among economic, political and social changes," SCFR Rep. p. 19). (See in general HCFA Rep. pp. 40-42 and SCFR Rep. pp. 18-19.)

Next page is Secs. 301-303  
(1)

46

## CHAPTER 3. INTERNATIONAL ORGANIZATIONS AND PROGRAMS

This is a new category of assistance which is based in part upon MSA Sec 306 (Multilateral Technical Cooperation and Related Programs), MSA Sec. 404 (Indus Basin), MSA Sec. 401 United Nations Emergency Force, MSA Sec. 407 (Palestine Refugees) and MSA Sec. 415 (NATO and OEEC). One consequence of making this a separate category is that development grant and supporting assistance funds generally will not be available for contribution to international organizations, and programs administered by them. They will, however, be available for the funding of a series of bilateral agreements between the U. S. and a number of other countries with the effectiveness of each agreement being conditioned upon the execution of all (e.g., U. S. project agreements with CENTO countries).

Section 301. GENERAL AUTHORITY.

FAA Sec. 301(a) constitutes a single authority to make contributions to international organizations formerly made under a number of MSA sections. It authorizes the President, whenever he determines it to be "in the national interest," to make voluntary (as opposed to assessed contributions charged to Department of State appropriations) on a grant basis to international organizations and to programs administered by such organization on such terms and conditions as he may determine in order to further the economic assistance purposes of the FAA.

FAA Sec. 301(b) preserves the existing requirement of MSA Sec. 306(a) that total U. S. contributions to the United Nations Expanded Program for Technical Assistance and the United Nations Special Fund for any calendar year after 1961 may not exceed 40 percent of the total contributions (including assessed and audited local costs) for such purpose. (HFCA Rep. p. 43).

FAA Sec. 301(c) preserves in a modified form the existing requirement of MSA Sec. 407 that in furnishing assistance to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the President shall take account of (1) whether Israel and the Arab host governments are taking steps toward the resettlement and repatriation of such refugees, and (2) the extent and success of efforts by UNRWA and such governments to rectify the Palestine refugee relief rolls. Under delegation from the President, the Secretary of State determined that it was in the U. S. interest to furnish assistance to UNRWA in FY 1961 (HFCA Rep. p. 44). Unlike MSA Sec. 407, there is now no requirement that the President make a progress report to Congress, and there is no explicit authority to use agencies other than UNRWA for this problem. The absence of

such explicit authorization, however would not prevent the President from using the general authority of FAA Sec. 301(a) to deal with another organization for this purpose.

Cross References: (1) Funds used to make contributions to international organizations or their program are not subject to the requirements of FA Approp. Act 1962 Sec. 102 regarding the computation of benefits and costs for water and similar projects. (2) See FAA Sec. 205 (International Development Association) and Sec. 707 (Food and Agricultural Organization). (3) Another restriction applicable to FAA Sec. 302 funds is FA Approp. Act Sec. 104 (no more than 20% to be obligated and/or reserved in the last month of availability).

Section 302. AUTHORIZATION.

FAA Sec. 302 authorizes the appropriation of \$153,500,000 for FY 1962 to carry out the purposes of Sec. 301 and Sec. 303 (Indus Basin Development). The full \$153,500,000 was appropriated for this purpose by the FA Approp. Act 1962. These funds will be in addition to other funds available under any other Act for such purposes. No other category of funds under the FAA, however, may be used for such purposes since in general it is to be assumed that a specific appropriation of an amount for a particular purpose is an indication that Congress did not intend that other amounts should be used for the same purpose. See e.g., 34 C.G. 237, 239 (1954). In addition, the presence in the law of several categories of aid in general suggests that there are meaningful lines separating them. This is a change from the MSA which specified the funds which might be made available for particular international programs but did not authorize a separate appropriation for all such organizations. Thus it was possible, for example, to use special assistance funds for contributions to any international organization for which funds were not specifically appropriated or limited. Now it will be possible to make voluntary contributions to any international organization on a grant basis only from (1) Sec. 302 funds, (2) contingency funds classified as Sec. 302 funds, (3) funds transferred to Sec. 302 pursuant to FAA Sec. 610, or (4) funds covered by a Sec. 614(a) determination. Development loan funds and any other funds will be available for contribution on a loan basis. A Senate proposal to break down the \$153,500,000 into specific amounts for each of ten organizations was not adopted.

Section 303. INDUS BASIN DEVELOPMENT.

FAA Sec. 303 is substantially the same as MSA Sec. 404. It specifies that funds made available under the economic assistance authorities of the FAA to be used by or under the supervision of the International Bank for Reconstruction and Development (IBRD) in furtherance of the development of the Indus Basin may be used in accordance with the requirements, standards, or procedures established by the IBRD concerning completion of plans and costs estimates and determination of feasibility, rather than the requirements, standards, or procedures set forth in this Act (e.g., FAA Sec. 611 and Sec. 102 of the FA Approp. Act 1962). It also provides, like MSA, Sec. 404, that where such funds are made available to be used in such a manner, they may be used without regard to the provisions of the 50-50 shipping requirements (Section 901(b) of the Merchant Marine Act of 1936), whenever the President determines that such requirement cannot be fully satisfied without seriously impeding or preventing accomplishment of the purposes of the Indus Basin program, provided that compensating allowances are made in the same or other areas. Since Section 901(b) of the Merchant Marine Act of 1936 permits the measurement of whether the 50-50 standard has been met to be made on a "geographic area" basis rather than a strict country-by-country basis (see M.O. 1174.2 for ICA's procedures), it is legally possible to impose a greater than 50-50 burden on any country in the Near East, South Asia region as compensation for less than 50-50 shipments in the Indus program without resorting to the special authority of FAA Sec. 303. The effect of a Sec. 303 determination would be limited to permitting the AID to impose a greater than 50-50 requirement on countries outside the Near East South Asia region and thereby permit a lower percentage to be shipped on U. S. vessels for the Indus program. In measuring compliance with the 50-50 provision one complication which AID will face is that DLF has applied the 50-50 test to each loan agreement over the life of the loan, and ICA has applied the test on an annual basis to all ICA assistance furnished to the particular country.

Cross References: FAA Sec. 634(d) requires the President to promptly notify the SCFR and the Senate Committee on Appropriations and the Speaker of the House of any determinations under FAA Sec. 303. See FAA Sec. 603 for other exemptions from the 50-50 requirement. See ICA Reg. 1 Sec. 201.6(m) for regulations enforcing the 50-50 provision.

Next page is Secs. 401-402

(1)

## CHAPTER 4 - SUPPORTING ASSISTANCE

This chapter authorizes types of assistance for a nondevelopmental purpose formerly authorized by MSA Sec. 131(a) (Defense Support) and MSA Sec. 400(a) (Special Assistance).

Section 401. GENERAL AUTHORITY.

FAA Sec. 401 is substantially identical to MSA Sec. 400(a). It authorizes the President to furnish assistance on such terms and conditions as he may determine "in order to support or promote economic or political stability". This section is designed to authorize the furnishing of assistance, mainly on a grant basis, to meet requirements relating to economic or political stability which are not primarily of an economic development nature and which do not come properly within the scope of the other major categories of aid, including requirements for nonmilitary assistance specifically designed to sustain and increase military effort, to assure the retention of U.S. base rights abroad, or to maintain internal security. (HCFA Rep. pp. 45-47; SCFR Rep. pp. 21-23). The section limits the recipient of assistance thereunder to "friendly countries, organizations, and bodies eligible to receive assistance" under FAA Part I (See FAA Secs. 620 and 635(b)). Note that the recipient need not be "less developed".

Supporting assistance joins together in a single category those programs which, in the MSA, had been labeled "defense support" and some of the principal programs which were carried out under "special assistance". Supporting assistance, unlike MSA's defense support, is not subject to any of the requirements formerly contained in MSA Sec. 142(a). It is, however, subject to a counterpart requirement substantially similar to that formerly contained in MSA Sec. 142(b) as set out in FAA Sec. 609.

Many of the special programs which formerly were authorized to be financed out of special assistance have been transferred to development grants or contributions to international organizations. See, for example, Assistance to American-sponsored Schools, and the United Nations Emergency Force. Certain programs which have previously been financed out of special assistance funds, such as the malaria eradication program and the Special Program for Tropical Africa, will now be financed with development grants because of the loosening of the restriction formerly applicable to technical cooperation funds on the use of equipment or commodities.

Although supporting assistance is designed mainly for assistance on a grant basis, it may be that loans will be desirable particularly in situations where a recipient country, after applying for a development loan, has been determined not to meet the standards for development loans. In such cases to shift to grants might encourage other similar countries not to attempt to satisfy the standards for

11/15/61

Sec. 401-402  
(2)

development loans.

Section 402. AUTHORIZATION.

This section authorizes no-year appropriations up to \$465,000,000 to the President for use beginning in the fiscal year 1962 to carry out the purposes of FAA Sec. 401. The FA Approp. Act 1962 appropriated \$425,000,000 for this purpose (including \$15,000,000 for supporting assistance to Spain) to remain available until June 30, 1962.

Cross References: For other provisions applicable to supporting assistance see FAA Sec. 609 (counterpart); FAA Sec. 611 (completion of plans and cost estimates); FAA Secs. 614(a) and 633 (Presidential waivers); FAA Sec. 620 (eligibility of recipients); FAA Sec. 635(g) (loans in general under the FAA); FA Approp. Act Sec. 102 (provision applicable to water resources projects requiring favorable cost-benefit ratio), FA Approp. Act Sec. 104 (obligation or reservation of funds within last month of availability limited to 20% of the appropriation); FA Approp. Act Sec. 105 (no use of funds for pensions, etc. to military personnel); FA Approp. Act 1962 Sec. 601 (publicity or propaganda within the U.S.).

Next page is Sec. 451  
(1)

51

## CHAPTER 5. CONTINGENCY FUND

Section 451. CONTINGENCY FUND.

FAA Sec. 451(a) is based upon MSA Sec. 451(b). It authorizes the appropriation to the President for FY 1962 of up to \$300,000,000 for any assistance authorized by FAA's Part I (Secs. 101-461) in accordance with provisions applicable to the furnishing of such assistance when the President "determines such use to be important to the national interest". Unlike MSA Sec. 451(b) it may be used for development lending purposes, but, also unlike MSA Sec. 451(b), it may not be used for military assistance purposes. The contingency fund may be used to meet requirements which were tentative or unforeseen at the time of the Congressional presentation, for assistance in accordance with other aid authorities, such as development loans or development grants, investment surveys, contribution to international organizations, and supporting assistance, beyond the amounts programmed or made available for those categories. (See Exec. Branch Sec.-by-Sec. Analysis, p. 9). Contingency funds may be used if the necessity of financing the particular activity is unforeseen or the amount of funds required could not be determined at the time of a Congressional presentation. The FA Approp. Act 1962 appropriated \$275,000,000 for this purpose to be available until June 30, 1962.

FAA Sec. 451(b) requires that the President keep the Committee on Foreign Relations, and the Committee on Appropriations of the Senate and the Speaker of the House of Representatives currently informed of the use of funds under this section.

The HCFA stated that it "does not intend that the funds made available under this authorization shall be used solely at the discretion of the Administrator of the Act for International Development". The Committee went on to state, however, that it understood "that the President may delegate functions with respect to making certain determinations and using the contingency fund" but that the Committee believes "the President should exert close supervision over and control of the contingency fund and that obligations incurred against the fund should be reported and reviewed by him" (HCFA Rep. p. 50). In this manner the HCFA in effect concurred in the contention of the Executive Branch that it was no longer bound by its promise that the determination function with respect to one-half of the contingency fund would be reserved to the President. This promise had been made on the premise that the Executive Branch request for \$500 million would be authorized and is not considered applicable to the FAA authorization of \$300 million .

Cross References: (1) FAA Sec. 642 (authorizes the use of contingency funds for the support of refugee programs

Next page is Sec. 451

(2)  
52

11/15/61

Sec. 451  
(2)

heretofore carried out under MSA Secs. 405 and Sec. 451(c)). (2) FA Approp. Act 1962 Sec. 104 (exempts contingency funds from the requirement that not more than 20% of funds may be reserved and/or obligated in the last month of availability). (3) FA Approp. Act 1962 Sec. 105 (use of funds for pensions, etc. of military personnel). (4) FA Approp. Act 1962 Sec. 601 (use of funds for publicity in the U.S.).

Next page is Sec. 461

53

10/17/61

Sec. 461

CHAPTER 6. ASSISTANCE TO COUNTRIES HAVING AGRARIAN ECONOMIES

Section 461. ASSISTANCE TO COUNTRIES HAVING AGRARIAN ECONOMIES

FAA Sec. 461 is new. It provides that the President shall place emphasis on the programs reaching people who are engaged in agrarian pursuits or who live in rural areas whenever the President determines that the economy of any country is in major part an agrarian economy.

The legal consequence of this section are minimal. It in fact is a statement of policy which could have been included in the policy statement in Section 102. A House proposal that 50% of all nonmilitary assistance be furnished in the manner described above to reach directly or indirectly people engaged in agrarian pursuits was not adopted at least in part because the Executive Branch announced that it would make an a priori determination that all nonmilitary assistance at least indirectly benefits agrarian peoples. (HCFR Rep. p. 50; H. Conf. Comm. Rep. p. 54).

Next page is Secs. 501-510

10/17/61

Secs. 501-510

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Next page is Sec. 601  
(1)

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## PART III

## CHAPTER 1. GENERAL PROVISIONS

This chapter of the FAA contains general provisions similar to those which have been in the past foreign aid legislation relating to private enterprise (including small business); shipping; procurement; use and distribution of commodities, foreign currencies, and other items; patents and technical information; counterpart; transfer of funds between accounts; completion of plans and cost estimates; contract authority; availability of funds; and termination of assistance. FAA Sec. 614 contains special authority, as has been provided previously in MSA Sec. 451(a), for the President to use funds or FAA Sec. 510 authority in an amount not to exceed \$250,000,000, and \$100,000,000 in foreign currencies in any fiscal year without regard to certain legal requirements. It also provides him with \$50,000,000 in unvouchered funds.

FAA Sec. 608 is new and authorizes the use of development grant money for the advance acquisition of Government-owned excess property and other property. FAA Secs. 618-620 are generally new and (a) tie most Latin American assistance to the Act of Bogota, (b) support channelling of aid through multilateral arrangements, and (c) prohibit assistance to Cuba, countries controlled by the international Communist movement, and countries which fail to meet certain conditions.

Section 601. ENCOURAGEMENT OF FREE ENTERPRISE AND PRIVATE PARTICIPATION.

FAA Sec. 601(a) is substantially identical to MSA Sec. 413(a). In it Congress expresses its recognition of the vital role which American free enterprise can and should play in the raising of levels of production and standards of living and declares a U.S. policy concerning the encouragement of free enterprise and private participation. One new provision is the inclusion in the policy statement of the phrase "to encourage the development and use of cooperatives, credit unions, and savings and loan associations." (See H. Conf. Comm. Rep. p. 56).

FAA Sec. 601(b) includes four instructions to the President designed to encourage participation by private enterprise in achieving the purposes of the FAA.

- (1) It instructs the President to find and draw to the attention of U.S. private enterprise, opportunities for investment and development in less-developed countries and to make agreements with other

- countries which will facilitate such private investment. The SCFR stated that this provision "should be read in conjunction with Part I, Chapter 2, Title IV, which authorizes more active participation by the Government in surveys of investment opportunities." (SCFR Rep. p. 27).
- (2) It continues the MSA provisions directing the President to accelerate a program of negotiating commercial trade and tax treaties, which shall encourage the flow of private investment and its equitable treatment in recipient countries.
- (3) It continues the MSA provisions directing the President to seek compliance by other countries with all treaties for commerce, trade and taxes and to assist U.S. citizens in obtaining just compensation for damages arising from violation of any such treaty. (See FAA Sec. 620(c) for a related provision concerning unpaid but recognized debts.)
- (4) A new provision states that the President shall, "wherever appropriate" carry out programs through private channels and "to the extent practicable" in conjunction with local or private or governmental participation (including development loans to any individual, corporation, or other body of persons).

Omissions: Two provisions of MSA Secs. 413(c) and 413(d) have not been reenacted. They required annual studies of the role of private enterprise and a single study of the role of other industrialized countries, in carrying out MSA purposes. See FAA Secs. 221-224 for consideration of investment guaranties formerly treated in MSA Sec. 413(b)(4).

Section 602. SMALL BUSINESS.

FAA Sec. 602(a) is substantially identical to MSA Sec. 504(a). It provides that insofar as practicable American suppliers, especially small independent enterprises, are to be informed as far in advance as possible of purchases to be financed with foreign aid funds. Further, prospective purchasers in countries receiving assistance are to be

10/17/61

Secs. 601-602  
(3)

informed of goods and services produced by small independent business in the United States. Finally, the President is directed to provide for "additional services" to give small business a better opportunity to participate in providing goods and services under the FAA. Sec. 602(a) applies to both military and non-military assistance whereas MSA Sec. 504(a) applied only to non-military assistance. The requirements of this section have been enforced by ICA through Sec. 201.13 of ICA Regulation 1.

FAA Sec. 602(b) continues MSA Sec. 504(b) creating an Office of Small Business, headed by Special Assistant for Small Business.

FAA Sec. 602(c) in many ways duplicates FAA Sec. 602(a) which applies to military assistance, but nevertheless it has been retained. It requires the Department of Defense to assist American small business to participate in the furnishing of commodities and services procured by the DOD in furnishing military assistance.

Next page is Sec 603

(1)

58

Section 603. SHIPPING ON UNITED STATES VESSELS.

FAA Sec. 603 is identical to MSA Sec. 509, except for minor conforming changes. It exempts from the 50-50 shipping requirement transportation between foreign countries of (1) goods purchased with foreign currency acquired under the FAA and under P.L. 480, and (2) fresh fruits and the products thereof. The situation to which this section most usually applies is the second leg of a so-called triangular transaction in which, for example, surplus agricultural commodities are sold to a Western European country in exchange for that country's currency which in turn on the "second leg" is used to buy goods for use in the AID program in the third country. See ICA M.O. 1174.2. Most triangular transactions in the past have been pursuant to the requirements of MSA Sec. 402. These will decline in future years because no additional requirement was included in the FAA (although the old MSA 402 is not repealed by FAA Sec. 642). Similar triangular arrangements may be made under Title I or P.L. 480 (e.g., see Sec. 104(d)) and are exempt from the 50-50 shipping requirement as a result of this section.

Fresh fruits and the products thereof are exempted because of their perishable nature and the necessity for refrigeration facilities which are limited in number on U.S. flag vessels. A similar exemption is also provided for sales of fresh fruit under P. L. 480.

A proposal to delete the phrase "between foreign countries" (in order to extend the exemption to "second leg" shipments from U.S.) was not adopted (See HCFA Rep. p. 65).

Cross References: See FAA Sec. 303 for application of the 50-50 shipping requirement to the program for the development of the Indus Basin. See ICA Reg. 1 Sec. 201.6(N) for regulations which enforce the 50-50 requirement. The 50-50 shipping requirement itself is found in Sec. 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. Sec. 1241).

Next page is Sec. 604(a)

(1)

Section 604. PROCUREMENT.

FAA Sec. 604(a) is new. It states that "funds made available" under the FAA may be used for procurement outside the U.S. only if the President determines that such procurement will not result in adverse effects upon the U.S. economy or industrial mobilization base which outweigh the economic or other advantages to the U.S. of less costly foreign procurement. In any such determination special reference is to be given to any areas of labor surplus and to the net position of the U.S. in its balance of payments with the rest of the world. Purchase outside the U.S. of commodities in bulk may be made only if the purchase price is lower than the prevailing U.S. price (as adjusted for transportation, etc.).

The section as a whole applies to all categories of funds and to both dollars and local currency made available under the FAA.

The requirement for a determination has been interpreted to apply only to the procurement of commodities. The determination may be made on a blanket basis rather than individually for each offshore procurement transaction and may be on either of two bases: (1) That there will be no adverse effects, or (2) That the adverse effects will be outweighed by economic or other advantages to the U.S. The reference to "other advantages" is new and was added at the request of the Executive Branch in order to permit taking into account foreign and trade policy considerations. The Executive Branch proposal to continue the provision of MSA Sec. 510, which required a Presidential determination to prohibit rather than to authorize offshore procurement, was not adopted.

The President's determination under this section generally leaves unaffected the procedures followed by ICA since December 1960 to implement its so-called "limited free world" procurement policy. (See ICATO Circ. 13, sent 12/6/60 and subsequent messages.) A review is being conducted of these policies and determinations made thereunder. The text of the President's determination is set out on the pages following this one.

The requirement regarding prices for procurement in bulk: The H. Conf. Comm. stated that it understood (1) that Sec. 604(a) would require procurement in the United States in situations where identical bids on bulk commodities are received from a U.S. and a foreign bidder, and (2) that this limitation will not prohibit procurement outside the United States of commodities not available in the United States (H. Conf. Comm. Rep. pp. 56-57). (See discussion under FAA Sec. 604(b) below.)

FA Approp. Act 1962, Sec. 110 requires that any obligation of FAA funds in excess of \$100,000 for procurement outside the U.S. of any commodity in bulk shall be reported to the House and Senate Committees on Appropriations at least twice annually with a statement of the reasons for the President's determination under FAA Sec. 604(a). Virtually all obligations for bulk procurement will have to be reported under Sec. 110 because most obligations permit procurement outside the U.S. even though procurement is likely in fact to take place in the U.S. Non-bulk procurement need not be so reported even though a Presidential determination under Sec. 604(a) is still necessary for such procurement.

Next page is Sec. 604  
(2)

65

## THE WHITE HOUSE

WASHINGTON

October 18, 1961

## MEMORANDUM FOR THE SECRETARY OF STATE

Subject: Determination under Section 604(a) of the Foreign Assistance Act of 1961

Section 604(a) of the Foreign Assistance Act requires that:

"Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States, and only if the price of any commodity procured in bulk is lower than the market price prevailing in the United States at the time of procurement, adjusted for differences in the cost of transportation to destination, quality, and terms of payment."

This section requires that procurement outside the United States using funds available under the Foreign Assistance Act of 1961 may be undertaken only if I determine that, on balance, there is no net detriment to the United States. I am in clear and fundamental agreement with this principle, and trade and foreign policy objectives which I have repeatedly endorsed, including my message on the balance of payments of February 6, 1961, already substantially provide this assurance.

As I indicated in that message, "our foreign economic assistance programs are now being administered in such a way as to place primary emphasis on the procurement of American goods. . . . This restriction will be maintained until reasonable over-all equilibrium has been achieved." Under this policy, which is continued in force by my determination below, the preponderant bulk of foreign assistance procurement will be made in the United States. The necessity for this is clear; such procurement will contribute generally towards resolving our balance of payments difficulties, and also helps stimulate industries in labor surplus areas.

On the other hand, cogent trade and foreign policy objectives and assistance program goals require limited amounts of procurement outside

Next page is Sec. 604(a)  
(3)

the United States. Some commodities needed in our assistance programs are not produced in the United States, or are not available in the quantities required at the time needed. Procurement from less developed countries, as provided below, advances their economic development, thereby contributing to the objectives of the assistance program and shortening their dependency on foreign assistance. Procurement of military material outside the United States is necessary, in some instances, to carry out projects important to our national security.

Therefore, I hereby direct that funds made available under the Foreign Assistance Act of 1961 for non-military programs not be used for procurement from the following countries: Australia, Austria, Belgium, Canada, Denmark, France, Germany, Hong Kong, Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, South Africa, Sweden, Switzerland, and United Kingdom. Upon certification by the Secretary of State, however, that exclusion of procurement in these countries would seriously impede attainment of U. S. foreign policy objectives and the objectives of the foreign assistance program, the Secretary of State may authorize specific exceptions which involve procurement in the excluded countries.

I also hereby direct that funds made available under the Foreign Assistance Act of 1961 for military assistance programs not be used for procurement outside the United States except to procure items required for military assistance which are not produced in the United States, to make local purchases for administrative purposes, and to use local currency available for military assistance purposes. Upon certification by the Secretary of Defense, however, that exclusion of procurement outside the United States would seriously impede attainment of military assistance program objectives, the Secretary of Defense may authorize exceptions to these limitations.

In the event that changed domestic or foreign conditions warrant, the Secretary of State in the case of non-military assistance, and the Secretary of Defense in the case of military assistance, shall consult with the Secretary of the Treasury, and other appropriate agencies, and recommend modification as may be appropriate in policies for procurement using funds made available under the Foreign Assistance Act of 1961. In the event that procurement outside the United States under the above conditions seriously threatens to affect adversely the industrial mobilization base or the economy of an area of labor surplus, the Secretary of State in the case of non-military assistance and the Secretary of Defense in the case of military assistance, shall consult with the Secretary of Commerce and other appropriate agencies and recommend such action as may be appropriate.

For the reasons and under the conditions stated above, and pursuant to the requirements of Section 604(a) of the Foreign Assistance Act of 1961 (PL 87-195), I hereby determine that the use of funds made available

11/15/61

Sec. 604(a)  
(4)

under the Act for procurement from sources outside the United States will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic and other advantages of less costly procurement outside the United States. Procurement outside the United States shall be from Free World sources, in any case. The effective date of this determination shall be September 30, 1961.

This determination shall be printed in the Federal Register.

/s/ John F. Kennedy

Next page is Sec. 604(b)-(d)

63<sup>(1)</sup>

10/17/61

Sec. 604(b)-(d)  
(1)

FAA Sec. 604(b) restates the first sentence of MSA Sec. 510 and prohibits the use of any FAA funds for purchase of commodities in bulk at prices higher than the market price prevailing in the U. S. at the time of purchase, adjusted for difference in the cost of transportation to destination, quality, and in terms of payment. The MSA exclusion from this prohibition of the purchase of raw cotton in bales is not continued. The prohibition of Sec. 604(b) extends to all funds made available under the FAA whereas the comparable MSA prohibition applied as a matter of law only to defense support funds. According to the HCFA, the phrase "in bulk" in both Sec. 604(a) and Sec. 604(b) refers to "quantity purchases not earmarked for a special project, (non-project assistance)," and "special purchases" for project assistance are not intended to be covered by the prohibition (HCFA Rep. p. 65). As the House Report on the original price provision enacted in 1949 pointed out, the provision "does not tie the Administrator's hands in single transactions for special purposes." However, ICA Regulation 1 (subpart D) has applied the standards of this section to commodity procurement in general, whether in bulk or not and whether for project or nonproject assistance.

FAA Sec. 604(c) is substantially the same as the last sentence of MSA Sec. 510. It requires procurement in the U. S., to the maximum extent practicable and when in furtherance of the purposes of the FAA, of surplus agricultural commodities financed under the FAA unless the commodity is not available in the U. S. in sufficient amounts to meet the "emergency" (a new word) requirements of recipients.

FAA Sec. 604(d) is based upon MSA Sec. 131(c). It requires (1) that U. S. dollars be made available for marine insurance on commodities procured in the U. S. where such insurance is placed on a competitive basis in accordance with normal pre-World War II trade practice, and (2) that if a recipient country discriminates "by statute, decree, rule or regulation" against any marine insurance company authorized to do business in the United States, commodities purchased with FAA funds and destined for such country shall be insured in the U. S. against marine risk with a company or companies authorized to do marine insurance business in the U. S. (HCFA Rep. p. 66). See ICA M. O. 1175.1.

The MSA provision applied as a matter of law to defense support funds, but it has been ICA's practice in the past and the new section will require in the future that the provision be given general application to all categories of economic assistance under the FAA. It does not apply to procurement under military assistance because the definition of "commodity" in FAA Sec. 604(c) limits the scope of the term as used in the FAA to nonmilitary assistance. Although the statute refers to discrimination "by statute, decree, rule or regulation," the existence of discrimination may be deduced from a prevailing practice which excludes dollar availabilities for the purchase of marine insurance.

Next page is Sec. 605  
(1)

64

Section 605. RETENTION AND USE OF ITEMS.

FAA Sec. 605(a) is substantially identical to MSA Sec. 511(b). The section makes provision for cases which may arise when changing circumstances make it inadvisable to furnish goods which have already been procured for AID programs. (SCFR Rep. p. 29). It permits any commodities or defense articles procured to carry out the FAA to be retained or transferred to any agency of the U.S. Government upon reimbursement rather than transferred to an aid recipient when the President determines that such retention or transfer will serve the best interests of the U.S. or when such retention is called for by concurrent resolution. Disposal of such items to prevent their spoilage or wastage or to preserve their usefulness may be made without regard to laws governing disposal of U.S. Government property. Money received from such disposal or transfer shall revert to the account out of which the original procurement was made or the account out of which similar procurements could currently be made. The Department of Justice believes that concurrent resolution procedures raise difficult questions of constitutionality. See also FAA Sec. 617 for termination of assistance.

FAA Sec. 605(b) is derived from MSA Sec. 505(a). It provides that whenever commodities are transferred to the U.S. Government as repayment of assistance under the FAA, such commodities may be used in furtherance of FAA's purpose and within its limitations. Thus, for example, commodities received in exchange for supporting assistance may be used under the development grant authority. This provision is based upon the former second sentence of MSA Sec. 505. It makes possible arrangements whereby, for example, the United States may furnish a European country with one kind of commodity in return for a second kind which in turn is then furnished to another country (SCFR Rep. p. 29). A specific exception formerly contained in MSA Sec. 505(a) concerning the Development Loan Fund was deleted because under the FAA, development loans may be repaid in dollars so that the provisions of this section may apply.

Section 606. PATENTS AND TECHNICAL INFORMATION.

FAA Sec. 606(a) is substantially identical to MSA Sec. 506(b). It provides an exclusive remedy against the U. S. Government for unauthorized "practice" within the U. S. of a patent or violation of other proprietary rights in connection with the furnishing of assistance under the FAA. The MSA referred to "use" of a patent rather than "practice" thereof, a difference which may involve special definitions used in U. S. patent law. Remedy by suit in the appropriate District Court or the Court of Claims within six years after the cause of action arises (but such six-year period shall not begin while the U. S. Government is in possession of the claim and has not mailed a notice of denial thereof) is supplemented by an alternative settlement authority in the head of the appropriate agency. The reference to the last paragraph Section 1498(a) of title 28 of the United States Code incorporates existing law allowing Government employees to bring patent suits against the Government in certain instances.

FAA Sec. 606(b) is substantially similar to MSA Sec. 506(c). It provides that the head of the U. S. Government agency concerned may settle and pay any claim under Sec. 606(a) provided the claimant accepts the payment as full satisfaction of his claim.

FAA Sec. 606(c) is new. It prohibits expenditures by the U. S. Government of any FAA funds for the acquisition of any drug or pharmaceutical product manufactured outside the United States if the "manufacture" thereof in the U. S. would have infringed a U. S. patent. Thus, the fact that the actual use of the patented information may be in a country which does not itself recognize the patent does not remove the prohibition of this section. The H. Conf. Comm. indicated that it is the intent of this amendment that it apply only to procurement by the United States Government and not to foreign government purchases (H. Conf. Comm. Rep. p. 57). What constitutes a "manufacture" may also involve a special definition of that term as used in U. S. patent law.

10/17/61

Sec. 607  
(1)

Section 607. FURNISHING OF SERVICES AND COMMODITIES.

FAA Sec. 607 is substantially similar to MSA Sec. 535(b). It authorizes U.S. Government agencies to furnish services and commodities on an advance-of-funds or reimbursement basis to friendly countries, international organizations, the American Red Cross, and Voluntary Nonprofit Relief Agencies registered with and approved by the Advisory Committee on Voluntary Foreign Aid. It permits the U.S. agency to credit funds received in reimbursement for services and commodities furnished to the current applicable appropriation, fund or account if the funds are received within 180 days after the close of the fiscal year in which services or commodities are delivered. Reimbursement may be limited to the out-of-pocket expenses, if any, of the transferring agency. In general, under this section the Administrator by making a determination will authorize other government agencies to deal directly with foreign governments (e.g., the furnishing of postal equipment to the Government of Liberia by the Post Office Department). The section also may be used as authority for AID to make transfers (particularly of excess property). The inclusion of the Red Cross and Voluntary Agencies among eligible recipients is a change from the MSA Sec. 535(b) which did not include them within its scope.

The omission of the word "nonmilitary" which was found in the MSA, has no effect since FAA Sec. 644 limits the definition of both "commodities" and "services" to nonmilitary assistance.

Next page is Sec. 608  
(1)

67

Section 608. ADVANCE ACQUISITION OF PROPERTY.

This section is new. The title applies only to FAA Sec. 608(a) and does not provide an accurate description of FAA Sec. 608(b).

FAA Sec. 608(a) authorizes the maintenance of up to \$5,000,000 of development grant funds in a revolving fund, from which expenditures may be made in advance of known needs for economic assistance purposes for acquiring U.S. Government excess property, making necessary repairs to, and otherwise processing, such property, and acquiring other property as necessary to complement such excess property, so that meaningful packages of property may be organized for more ready transfers as specific needs arise. As such property is transferred either pursuant to the economic assistance provisions of FAA Part I or pursuant to FAA Sec. 607, the revolving fund will be reimbursed from funds available under the section pursuant to which property is furnished. The purpose of Sec. 608(a) is to overcome one of the chief obstacles to fuller utilization of U.S. excess property. Excess property is available usually only for a short period of time from 30 to 45 days which prohibits a complete review of world-wide needs with a result that it is extremely difficult for AID to match the availability of an excess item with field requirements. Although both domestic and foreign excess property may be held pursuant to this section, no more than \$15,000,000 in original acquisition cost of domestic excess property may be held at any one time.

FAA Sec. 608(b) provides that, with the exception of property acquired in any fiscal year with a total original acquisition cost not exceeding \$45,000,000 which may be used pursuant to the economic assistance provisions of FAA Part (I) no domestic excess property shall be acquired by AID for use pursuant to Part I or FAA Sec. 607 unless (1) it is acquired for use exclusively by a U.S. agency or (2) it is determined that such property is not needed for donation pursuant to section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended. It is the understanding of AID that the first exception noted in the preceding sentence applies only to property which will be used solely by a U.S. Government agency and not to any property which will be transferred outside the U.S. Government. The purpose of section 608(b) is to avoid excessive interference with the donable property program for State education purposes. The subsection does not in any way limit the use by AID of (1) domestic excess property not needed in the donable property program or (2) foreign excess property in general.

Next page is Sec. 609  
(1)

10/17/61

Sec. 609  
(1)

Section 609. SPECIAL ACCOUNT (COUNTERPART).

FAA Sec. 609 is substantially similar to MSA Sec. 142(b) except that as a matter of law the new section applies only to supporting assistance and MSA Sec. 142(b) as a matter of law was applicable only to defense support assistance. The result, therefore, is that what was formerly known as special assistance is now subject to a counterpart requirement as a matter of law. This will not require a substantial change in practice since ICA has followed the policy, pursuant to Congressional urging, of requiring counterpart deposits for all assistance in which commodities or services are furnished to a recipient country on a grant basis under arrangement which result in the accrual of proceeds to the recipient government. See ICA M. O. 704.6 which, though somewhat outdated by the FAA, remains substantially in effect. In addition, the H. Conf. Comm. stated in its report that their understanding was that "foreign currency could and should be deposited on commodities made available for sale by recipient countries under development grants . . . except in unusual situations." A proposal to make the provision permissive rather than mandatory was not adopted.

One significant change from MSA Sec. 142(b) is that FAA Sec. 609(a) requires the deposit only of proceeds from the "sale" of the commodities and does not require the deposit of proceeds from the "import" thereof. This change is to avoid difficulties in connection with the collection of the counterpart equivalent of import duties collected by the recipient countries. The result will be in general to limit required deposits to proceeds arising from sale of subauthorizations under procurement authorizations, net proceeds of State monopolies which import under procurement authorizations, and other similar Government receipts. There remain, however, a number of difficult questions under this section, and specific problems should be referred to Washington.

The section continues in effect the requirement for U. S. uses that the recipient country "make available to the United States Government such portion of this special account as may be determined by the President to be necessary for the requirements of the United States Government," (except for countries to which a 10% minimum requirement has been applicable under any earlier act). The section also continues in effect the requirement that the balance of such funds be utilized for programs agreed to by the U. S. Government "to carry out the purposes for which new funds authorized by this act would themselves be available." (HCFA Rep. p. 47.) Finally, the section continues in effect the so-called Zablocki Amendment regarding repayments of loans from counterpart funds which was discussed in ICATO Circ. A-318 sent 2/18/61.

Next page is Sec. 609  
(2)

69

FAA Sec. 609(b) provides that any unencumbered balances of funds which remain in the account upon termination of assistance to such country shall be disposed of for such purposes as may, subject to approval by act of the Congress, be agreed to between such country and the U. S. Government. Under MSA Sec. 142(b) the provision read that such disposition shall be "subject to approval by the Act or joint resolution of the Congress." This provision does not prevent AID from disposing of any such balances pursuant to its usual procedures before assistance is terminated to any particular country. It applies only to the amount, if any, which is undisposed of at the time of the termination of all aid programs in the country. It does not apply when, for example, a technical cooperation program is terminated but a development loan program is continued.

Omissions: The provisions of MSA Sec. 131(d) which exempted aid to Korea from certain MSA requirements (including counterpart) has been omitted in the FAA. Also, the prohibition of MSA Sec. 516 against the use of counterpart and other funds for debt retirement has not been carried forward into the FAA.

Cross Reference: FA Approp. Act Sec. 105 (prohibition against use of counterpart for pensions, etc., to military personnel).

10/17/61

Sec. 610  
(1)

Section 610. TRANSFER BETWEEN ACCOUNTS.

FAA Sec. 610 is substantially identical to MSA Sec. 501. It authorizes the President to transfer up to 10% of funds made available for any FAA provision (including unexpended balances, obligated or unobligated, carried over from the previous fiscal year but not including contingency funds used for the purposes of such provision) to any other provision of the FAA, provided the funds (including any carry-over) increased by the transfer are not increased by more than 20%. The word "for" has been substituted for "pursuant to" in the phrase "funds may be available pursuant to any provision of this Act" since the intent of the law is to designate funds according to the purposes for which they are available at the time of the proposed transfer regardless of the original source (HCFR Rep. p. 69). Note that under FAA Sec. 634(d) the President is required to notify promptly the Senate Appropriations and Foreign Relations Committees and the Speaker of the House of any transfers under this section.

Next page is Sec. 611  
(1)

Section 611. COMPLETION OF PLANS AND COST ESTIMATES.

FAA Sec. 611 is derived from MSA Sec. 517. It establishes certain requirements regarding planning in advance of obligation by agreement or grant of funds (including contingency funds) used for purposes of development loans, development grants, or supporting assistance.

FAA Sec. 611 (a) requires that no agreement or grant constituting an obligation in excess of \$100,000 may be entered into (1) if it requires "substantive technical or financial planning" until "engineering, financial and other plans" necessary to carry out such assistance" (e.g., an engineering survey to determine the feasibility), and "a reasonably firm estimate of the cost to the United States Government" have been completed, and (2) if it requires legislative action within the recipient country, unless such action may "reasonably be anticipated to be completed in time to permit the orderly accomplishment of the purposes of such agreement or grant." In MSA Sec. 517 this latter provision regarding legislative action was phrased to require a reasonable anticipation that such action would be completed within one year; this has been changed to a more flexible standard "to permit the orderly carrying out of longer term legislative programs involving tax, land, and other reforms." (HCFA Rep. p. 69.)

Note that Sec. 611(a) applies to any obligation which "requires substantive technical or financial planning." Its application is not limited to capital construction projects although as a matter of practice such projects may receive the most extensive attention under Sec. 611. If a judgment can be made that the obligation in question does not require "substantive," technical or financial planning, then the conclusion may be drawn that section 611 does not apply to the making of that obligation. If, however, the obligation does require such technical or financial planning, Sec. 611(a) prohibits the entering into of the obligation until the plans necessary to identify the object of the assistance and to carry out such assistance have been completed and a reasonably firm estimate of the cost to the U. S. Government has also been completed. As the HCFA stated in its report on the MSA of 1959 (at p. 52): "Section 517 was designed to insure that there were firm plans and cost estimates to provide a basis on which the United States could responsibly commit itself to proceed with final design and construction of the project."

The section applies to any obligation in excess of \$100,000 and would therefore apply to obligations which add additional amounts of funds in excess of \$100,000 to projects which were initiated before MSA Sec. 517 was adopted in the MSA of 1958.

ICA's past practice has been to place the burden of determining that these requirements have been satisfied upon the person signing the obligating document (usually the Mission Director). The determination must be made before the funds are obligated.

Next page is Sec. 611

(2)

72

FAA Sec. 611(b) states that when plans are required under Sec. 611(a) for any water or related land resource construction project or program, such plans shall include a computation of benefits and costs made insofar as practicable in accordance with procedures set forth in Circular A-47 of the Bureau of the Budget (which is reproduced on the following pages). This subsection is identical to MSA Sec. 517(b) except for a conforming change. (See also section 102 FA Approp. Act 1962 for a similar but more restrictive provision.)

FAA Sec. 611(c) is based upon the third sentence of MSA Sec. 517(a) and requires that contracts for construction outside the United States must be made on a competitive basis to the maximum extent practicable. The application of this provision to engineering contracts for construction projects is under consideration. The MSA excepted DLF agreements from this requirement. The new FAA language does not make any exceptions so that development loans, as well as development grants and supporting assistance, are now all subject to this requirement.

FAA Sec. 611(d) exempts assistance for the sole purpose of preparing engineering, financial, and other plans from the requirements of Sec. 611(a) and is identical to the second sentence of MSA Sec. 517(a).

Cross Reference: FA Approp. Act 1962 Sec. 102 (provision applicable to water resources projects requiring satisfaction of criteria of Bureau of the Budget Circular A-47 which includes requirement of a favorable cost-benefit ratio).

11/15/61

Sec. 611  
(3)

EXECUTIVE OFFICE OF THE PRESIDENT  
BUREAU OF THE BUDGET  
WASHINGTON 25, D. C.

December 31, 1952

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Attached Bureau of the Budget Circular No. A-47

In connection with the attached Circular, it is desired to bring to your attention a memorandum regarding the Circular which is being sent to the heads of the agencies having responsibility for the development of water and related land resources programs. The memorandum is as follows:

EXECUTIVE OFFICE OF THE PRESIDENT  
Bureau of the Budget  
Washington 25, D. C.

December 31, 1952

MEMORANDUM FOR:

Secretary of Agriculture  
Secretary of the Army  
Secretary of Commerce  
Secretary of the Interior  
Secretary of State  
Chairman of the Federal Power Commission  
Administrator of the Federal Security Administration  
Chairman of the Board of the Tennessee Valley Authority

Subject: Bureau of the Budget Circular on water resources projects.

The attached Bureau of the Budget Circular No. A-47 is designed to set forth the standards and procedures which will be used by the Executive Office of the President in reviewing proposed water resources project reports and budget estimates to initiate construction of such projects, submitted in accordance with existing requirements.

It has been generally recognized that the absence of a clear statement of uniform standards and procedures has resulted in delays and difficulties in the clearance of project reports. The attached Circular, which has grown out of more

Next page is Sec. 611  
(4)

74

than two years of work in the review of water resources policy, is intended to bring together certain of the existing policies of the President which have been set forth from time to time in Executive Office action on project reports, and in some cases to develop modified standards for action on project reports.

While there is general agreement on most of the substantive provisions of the Circular, there remain some differences of opinion with respect to the position taken on certain issues. As indicated in the Circular, however, its issuance is in no way intended to restrict the content of agency reports submitted to the Bureau of the Budget for review on behalf of the President, nor to determine the position which agencies may take with regard to substantive issues. However, it is hoped that, within the framework of existing general provisions of law, the Circular will encourage the adoption of more uniform agency policies and standards, and that it will give the agencies a better basis for presenting all the pertinent information which has a bearing on the merits of proposed projects. Also, since most project reports submitted to the Bureau become the basis for proposed legislation, it is believed that issuance of the Circular will be helpful in pointing up specific policy areas which may require special attention by the President and by the Congress.

It is to be assumed that experience in the application of the Circular will show the need from time to time for modification in its provisions. In particular, it is recognized that further study and refinement will be desirable with respect to (1) the measurement of project benefits, (2) the method of allocating project costs, and (3) the price level assumptions to be used in evaluating both benefits and costs.

The Bureau of the Budget wishes to express its appreciation for the great assistance which has been given by many individuals in the agencies concerned in the preparation of this Circular. It wishes also to acknowledge the value of the report of the President's Water Resources Policy Commission in the preparation of this Circular.

This memorandum is being sent to the heads of all agencies having responsibility for developing water and related land resources programs.

(Signed) Frederick J. Lawton  
Director

Attachment

Attachment

FREDERICK J. LAWTON  
Director

Next page is Sec. 611  
(5)

75

11/15/61

Sec. 611  
(5)

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON 25, D. C.

December 31, 1952

CIRCULAR NO. A-47

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Reports and budget estimates relating to Federal programs and projects for conservation, development, or use of water and related land resources.

1. Purpose. The policies of the President with regard to programs and projects for the development of water and related land resources have been established from time to time both as a part of the normal budget and legislative review process under Bureau of the Budget Circulars No. A-11, "Instructions for the preparation and submission of annual budget estimates," and No. A-19, "Reports and recommendations on proposed and pending legislation," and as a part of the review of project reports under Executive Order 9384, "Submission of reports to facilitate budgeting activities of the Federal Government." This Circular is intended to draw together certain of these policies for water resources programs and projects and to provide the agencies in advance with a better understanding of the considerations which will be used in determining the relationship of a proposed program or project, or budget estimate, to the program of the President.

The standards and procedures set forth in this Circular will be used by the Executive Office of the President in reviewing agency reports and budget estimates subject to its provisions, in order that uniform policies may be applied with a view towards (a) establishing priority for projects yielding the greatest value to the Nation, and (b) securing effective resources development at minimum necessary cost. The priority among programs or projects meeting the standards and procedures set forth in this Circular, and action upon budget estimates to initiate such programs or projects, necessarily will also depend on budget policies established from year to year to meet current economic conditions.

2. Authority. Executive Order 9384, October 4, 1943, requires submission to the Bureau of the Budget of reports relating to or affecting Federal public works and improvement projects. Bureau of the Budget Circular No. A-19, Revised, requires submission to the Bureau of agency reports on proposed and pending legislation. Bureau of the Budget Circular No. A-11, Revised, outlines the requirements for preparation and submission to the Bureau of annual budget estimates. This Circular, No. A-47, supplements the requirements of the Executive Order and Circulars referred to, and is issued pursuant to the authority cited therein.

(No. A-47)

Next page is Sec. 611  
(6)

76

3. Coverage. This Circular relates to Federal programs or projects for the conservation, development, or use of water and related land resources. It applies to any report and to any budget estimate to initiate construction of a program or project, which, by the terms of the Executive Order and Circulars referred to in paragraph 2, is required to be submitted to the Bureau of the Budget and which involves a program or project of the type referred to in the first sentence of this paragraph. It does not apply to budget estimates for electric transmission lines or steam electric generating plants required in connection with water resources projects.

4. Compliance.

- a. Relation to existing law. The standards and procedures set forth in this Circular shall not be regarded as authorizing any deviation from general or specific requirements of law. Whenever a report or budget estimate varies from such standards or procedures because of a requirement of existing law, the variation shall be indicated and reference made to the section of law imposing such requirement.
- b. Application to budget estimates. Except as provided in paragraph 4a, a budget estimate subject to this Circular shall conform to the standards and procedures set forth herein.
- c. Variations from Circular. This Circular shall not be regarded as requiring an agency to submit a report which is contrary to its views. However, any report which varies from the standards and procedures set forth herein because of agency policies shall, in the same manner as indicated in paragraph 4a, be accompanied by a statement of the reasons for the variation. Each report shall contain or be accompanied by appropriately documented information to indicate the exact extent to which the standards and procedures established herein have been followed in the preparation of the report. Where the preparation of the basic report is so far advanced on the date of issuance of this Circular that it would be impracticable to furnish the information required by this Circular, this fact will be taken into account in the consideration of the report. All reports submitted after July 1, 1953, however, must conform to the requirements of this Circular.

5. Definitions. For the purposes of this Circular:

- a. "Project" means any integral physical unit or several component and closely related units or features, or any system of measures, undertaken or to be undertaken within a specified area for the control or development of water or related land resources, which can be considered as a separate entity for

(No. A-47)

Next page is Sec. 611

77 (7)

purposes of planning, evaluation, financing, construction, management, or operation. Separable units or features will generally be considered as separate projects.

- b. "Program" means any combination or system of two or more interrelated projects.
- c. "Benefits," as used for purposes of evaluation of proposed programs or projects, means all the identifiable gains, assets, or values, whether in goods, services, or intangibles, whether primary or secondary, and whether measurable in monetary or nonmonetary terms, which would result from the construction, operation, or maintenance of a program or project.
- d. "Primary benefits" means the identifiable gains, assets, or values directly resulting from any program or project.
- e. "Secondary benefits" means identifiable gains, assets, or values other than primary benefits of a program or project which are properly creditable to the program or project.
- f. "Economic costs," as used for purposes of evaluation of proposed programs and projects, means all the financial costs of the program or project except investigating, surveying and planning costs incurred prior to authorization; and all the other identifiable expenses, losses, and liabilities, whether in goods, services, or intangibles, whether direct or induced, and whether measurable in monetary or nonmonetary terms, which are incurred as a result of constructing, operating, or maintaining a program or project.
- g. "Financial costs" means all the monetary outlays made in connection with a program or project and interest costs connected therewith; i.e., the construction costs, the operation and maintenance costs, and interest on the unliquidated balance of the reimbursable construction costs. When applied to allocations made to irrigation for repayment purposes under paragraphs 7a and 18b, "financial costs" shall not include interest on the irrigation construction costs.
- h. "Construction costs" means expenditures (amounts paid and payable) for the initial project construction and the net replacements and additions of significant units thereof, including contract work, materials and supplies, labor, and use of equipment; acquisition of lands, easements, rights-of-way, and water rights; costs of relocating facilities and the settlement of damage claims; interest during construction; any capital expenditures for protection of public health, for preventing loss of or damages to recreation, fish and wildlife and mineral resources, and scenic, archeological, and historical

(No. A-47)

Next page is Sec. 611  
(8)

78

values; any capital expenditures for the replacement of recreation and fish and wildlife resources damaged or destroyed by the project; the appropriate portion of engineering, administrative and general expenses of the agency relating to the project; and all other amounts of expenditures specifically applicable to the investigations, surveys, plans, designs, and construction of the project. When applied to allocations made to irrigation for repayment purposes under paragraphs 7a and 18b, "construction costs" shall not include interest during construction on the costs allocated to irrigation.

- i. "Operation and maintenance costs" means those expenditures for materials and supplies, labor, necessary services, equipment and operating facility use, and an appropriate portion of engineering, supervision and general expenses of the agency which are needed to operate a project once constructed and to make repairs, minor additions and replacements, and otherwise to maintain the project in sound operating condition for a maximum economic life. This includes any expenditures of the project, other than capital expenditures, for protection of public health, for preventing loss of or damages to recreation and fish and wildlife resources, and scenic, archeological and historical values; and any expenditures of the project, other than capital expenditures, for the replacement of recreation and fish and wildlife resources damaged or destroyed by the project.
- j. "Net revenues" means the difference between the total revenues of the program or project or separable purpose thereof and the properly allocable financial costs of such program, project or purpose.
- k. "Reclamation" means making land suitable for productive agricultural use or increasing or maintaining its productive agricultural use by means of (1) irrigation; (2) drainage, excluding drainage undertaken pursuant to Section 2 of the Act of December 22, 1944 (58 Stat. 887), and excluding drainage undertaken solely to counteract the effects of flood control works; and (3) recharging of ground waters.

6. State, local, and Federal participation. Agencies responsible for developing proposed programs or projects shall, as now provided under certain laws and administrative practices, consult with the people of the area primarily affected and with the State and local governments and Federal agencies concerned. This consultation should take place at the earliest feasible stage and should be continued throughout the investigation, survey, and planning stages, in order that the views of these groups and agencies may receive adequate

(No. A-47)

Next page is Sec. 611

79 (9)

consideration. Such consultation need not be repeated at the time budget estimates to initiate a program or project are being prepared; however, budget estimates shall include the latest information available on the views of Federal agencies, States, and interested local groups as to priorities of project development, scheduling of construction, and willingness to comply with requirements for local participation.

7. Information for inclusion in, and criteria for review of, evaluation reports.

- a. The following categories of information, some of which are elaborated in later paragraphs of this Circular, shall be included in the evaluation report proposing authorization of a new water or related land resources program or project. Under certain of the categories of information listed below, there are indicated the criteria which will be used by the Executive Office in the review of proposed program or project reports:
- (1) A description of the need for the production or services which would result from the program or project; the relation of the program or project to the other elements of the resource development program of the region in which the program or project is to be undertaken; the contribution of the program or project to balanced national conservation and development; and the efficiency of the program or project in meeting regional or national needs.

An important consideration in the review of evaluation reports will be whether execution of the program or project, and, within practical limits, execution of each separate part of a program or project, will be more economical than alternative means available in the region for meeting the same needs. Where a single-purpose alternative is available, inclusion in a multiple-purpose program or project plan of any purpose of resource development will be considered only if the purpose is accomplished more economically through the multiple-purpose program or project than through the single-purpose alternative. A further consideration in the review of evaluation reports will be the relative economy of alternative means available on a national basis for meeting the needs to be met by the program or project.

- (2) A concise but complete estimate of all the benefits and all of the economic costs of undertaking the program or project. In addition to comparing the total benefits

(No. A-47)

Next page is Sec. 611  
(10)

80

of the program or project with its total economic costs, the estimate should also show separately the particular benefits and economic costs attributable to each purpose of the program or project. Wherever appropriate, benefits and economic costs shall be expressed in monetary terms. Where monetary estimates cannot reasonably be made, the relative significance of such benefits and costs shall be stated in as precise and quantitative terms as possible. Because any long-term estimates are subject to wide margins of error, the results should be expressed in ranges rather than in single figures. The estimate should be made from an over-all public or national viewpoint and should indicate any specifically identifiable groups, localities, or districts receiving program or project benefits.

While it is recognized that a comparison of estimated benefits with estimated costs does not necessarily provide a precise measure of the absolute merits of any particular program or project, one essential criterion in justifying any program or project will, except in unusual cases where adequate justification is presented, be that its estimated benefits to whomsoever they may accrue exceed its estimated costs. Inclusion in a multiple-purpose program or project plan of any purpose of resource development will, except in unusual cases where adequate justification is presented, be considered only if the benefits attributable to that particular purpose are greater than the economic costs of including that purpose in the program or project. Monetary computations will be most useful in arranging programs or projects, or parts thereof, serving the same purpose in the order of their economic desirability.

- (3) All data relating to the financial feasibility and to the allocation and reimbursement of financial costs prepared in accordance with the standards set forth in paragraphs 11-21. This shall include a statement as to the financial feasibility of reimbursable features of the program or project and the net effect of the program or project on the Federal Treasury. For this purpose the project report shall show an analysis of the sources of repayment or sharing of the financial costs of each of the purposes involved in the program or project. Financial costs shall be converted to an annual basis to make possible a comparison of annual financial costs and annual revenues of any program or project or separable purpose thereof.

(No. A-47)

Next page is Sec. 611  
(11)

81

(4) A statement as to the source and nature of, and an appraisal of the adequacy of, the basic information available and used during the preparation of such program or project and the methods employed in the analysis and interpretation of such basic information.

b. Requests for funds for the initiation of construction of a program or project following authorization shall be accompanied by a statement indicating the changes which have occurred, if any, since submittal of the original report upon which authorization was based, affecting the total cost, the economic evaluation, or the purposes of the program or project. If substantial changes have occurred, the request shall be accompanied by a revised evaluation report.

8. Benefits to be included in evaluation. The evaluation report prepared in accordance with paragraph 7 shall include an estimate of the primary benefits of the program or project. Unless the report sets forth clear justification for considering other factors, main reliance in the review of project reports will be placed on the following categories of primary benefits:

- a. Reduction of flood damage, including damage from water and sediment, to land and other public and private property; and prevention of loss of life.
- b. Increases in the expected net income obtained directly from changed use of the property made possible by any form of flood control.
- c. Increases in expected net income from lands on which watershed treatment measures are to be installed as part of the program or project.
- d. Increase in expected net farm income from additional production or reduced cost of production of farm products as a result of reclamation of land.
- e. In the case of navigation projects other than harbor improvements, the transportation savings resulting from:
  - (1) The differential between expected costs of movement by non-water transport and expected costs of movement by water transport for those commodities which will be carried by land transport if the project is not built, but which will move by water if the project is built.
  - (2) For traffic which will not move without the waterway improvement, but which will move by water if the project

(No. A-47)

Next page is Sec. 611  
(12)

82

is built, the differential between the cost of transportation by waterway and the highest cost at which it would be feasible for the traffic to move.

- (3) Where the project improves an already navigable waterway, the differential between expected costs with and without the project of moving on the waterway traffic expected to move on the waterway even if the project is not built.

f. Direct benefits of shore protection.

g. Direct benefits from harbor improvements, including those for small boat traffic.

h. Value of electric energy to be produced. This is equal to the lower of two figures:

- (1) The cost of equivalent energy from the cheapest alternative source of energy—private, Federal, or other—that is available, or could be expected to develop in the absence of the project, to meet the same power needs. Taxes and interest charges for this alternative source should be computed on a basis comparable with the project.

Note.--Where the project plan includes the cost of constructing and operating the necessary facilities to transmit and distribute the project power to load centers, the costs of the alternative source with which the project is compared should also include transmission and distribution costs to the same load centers. Where the project plan does not include transmission costs, the total costs incurred by the alternative source in providing power at load centers should, for purposes of determining power benefits, be reduced by the transmission costs incurred in bringing the project power to the same load centers.

- (2) Value of power to users (considered as the highest price they would pay and applicable especially where the cost of alternative power would be prohibitive for particular users).

i. Value of municipal, industrial, and domestic water supply to be furnished, measured by the cost of obtaining equivalent supply from the cheapest alternative source that would most likely be used in the absence of the project, including the cost of development of the same source of water by the water users themselves as one of the alternatives. Taxes and interest charges for the alternative source should be computed on a basis comparable with the project.

(No. A-47)

Next page is Sec. 611  
(13)

83

- j. Increases in the value of recreation and fish and wildlife resources expected as a result of the project. Although such benefits are usually not subject to measurement in monetary terms, complete information, in terms of the amount and type of expected use of recreation and fish and wildlife developments is required as a basis for comparison of the incremental costs and benefits of such developments referred to in paragraphs 11c and 19b.
- k. Savings in the cost of water treatment or gains in the value of streams for industrial, municipal, and domestic water supply, and other uses, through the abatement of water pollution; and reduction in the cost of pollution abatement by stream flow augmentation. Such benefits should be calculated as the residual benefit possible after allowing for all direct measures to control pollution at the source that would normally be required or considered necessary by the public health authorities concerned.

The evaluation prepared in accordance with paragraph 7 shall also include an estimate of any secondary benefits which the program or project will provide. The evaluation shall include a separate showing of total primary and total secondary benefits. Until standards and procedures for measuring secondary benefits are approved by the Bureau of the Budget, the evaluation shall be based mainly upon primary benefits.

The evaluation shall also include an appraisal of the general benefits which will accrue through such effects as safeguarding life and public health, stabilizing national and regional food and raw materials production, and contributing directly to the improvement of technically underdeveloped areas within the Nation's boundaries.

9. Costs to be included in evaluation. The evaluation prepared in accordance with paragraph 7 shall include an estimate of the total construction costs and the total operation and maintenance costs of the program or project, whether such costs are incurred by the Federal Government, State and local governments, or private interests.

Such an evaluation shall also include a statement of economic costs expected to be induced by the program or project, such as the costs of:

- a. Displacement of people.
- b. Decreased value of lands, minerals, water quantity or quality, and other water or related land resources, where not reflected in market values.

(No. A-47)

Next page is Sec. 611  
84 (14)

- c. Rectifying adverse effects upon sanitation, transportation, highway construction or maintenance, or other activities reasonably foreseen as being affected by the program or project.
- d. Business losses, such as disruption of trade or diversion of waterborne traffic from existing ports or channels.
- e. Losses in State or local tax revenues, adjusted for changes in costs of State and local government services caused by the existence of program or project facilities.
- f. Unprevented and uncompensated losses of or damages to fish and wildlife resources; recreation resources; and scenic, archeological or historical values.
- g. Abandonment of economically useful structures, such as locks and bridges.

Such an evaluation shall also include an appraisal of other detriments to the general welfare, whether or not they can be measured in monetary terms, and the groups which will suffer any substantial injury should be identified so far as feasible.

10. Comparison of benefits and economic costs. Benefits to be obtained and economic costs to be incurred throughout the assumed economic life of a program or project, as limited by paragraph 14 of this Circular, where expressed in monetary terms, shall be converted to a common time basis to facilitate the comparison called for in paragraph 7a(2). Where benefits and economic costs are compared on an annual basis, interest on the construction costs should be included in the computation of average annual equivalents for total economic costs. Where the present net worth method of comparing benefits and economic costs is to be used, future benefits and economic costs should be discounted to present values. Using an interest rate to cumulate benefits and economic costs is necessitated where the net gain or loss at any given time during the operation of the program or project is to be computed. Determination of the applicable interest or discount rate shall be made in accordance with paragraph 15, except for the interest rate on project costs to be financed by non-Federal sources.

11. Purposes to which costs may be allocated and criteria for allocation of costs. The evaluation report prepared in accordance with paragraph 7 shall include a tentative allocation of the construction costs and operation and maintenance costs of the program or project to the several purposes to be served, which allocation shall serve as the basis for the proposed reimbursement and cost-sharing arrangements recommended in the report. Proposals for the allocation of costs will be reviewed in accordance with the following standards:

(No. A-47)

Next page is Sec. 611  
(15)

85

- a. Subject to the criteria set forth in paragraphs b and c following and paragraphs 19 and 20, costs of both separable and joint facilities shall be equitably allocated to the following purposes and to no other purposes:
- (1) Flood control
  - (2) Reclamation
  - (3) Navigation
  - (4) Watershed management
  - (5) Electric power and energy
  - (6) Domestic, municipal, or industrial water supply
  - (7) Recreation development
  - (8) Fish and wildlife development
  - (9) Pollution control or abatement
- b. Costs of programs or projects shall be allocated to the several purposes for which they are undertaken on the following basis:
- (1) The costs of facilities or features of a program or project used only for a single purpose of water resources development shall be allocated to the respective purposes served by such facilities or features.
  - (2) The costs of facilities or features of a program or project used jointly by more than one purpose of water resource development shall be allocated among the purposes served in such a way that each purpose will share equitably in the savings resulting from combining the purposes in a multiple-purpose development.
- c. Allocations of costs to items (8) and (9) of paragraph a above shall be governed by the following:
- (1) Allocations of costs to fish and wildlife shall be limited to the following:
    - (A) Costs incurred for the development of fish and wildlife to the extent that such costs are to be borne by States, local governments, or local interests.
    - (B) The increment of additional costs of a project incurred for fish and wildlife development if the fish and wildlife resources to be developed are determined by the Secretary of the Interior in accordance with present law to be of national significance, and if either (a) the work is proposed to be authorized as a part of a national

(No. A-47)

Next page is Sec. 611  
(16)

86

fish and wildlife program and financed under appropriations made for that purpose, or (b) the letter transmitting the proposed report to the Congress contains proposed authorizing language stating the maximum amount of such costs which would be borne by the Federal Government.

- (2) Allocations of costs to pollution control or abatement shall be limited to those costs for that purpose which are to be fully reimbursed by the States, local governments, districts, or other interests concerned, including other Federal establishments.

12. Responsibility for allocation of costs on multiple-purpose programs or projects. For purposes of this Circular, the head of the agency responsible for construction of the program or project will be considered responsible for:

- a. Making the initial tentative allocation of costs among the purposes to be served by a program or project.
- b. Making a revised cost allocation prior to the submission of a budget estimate to initiate the program or project if the costs can be ascertained with greater accuracy at that time than at the time of submission of the project report, or if the designated use of the program or project is changed, or if the estimated costs have changed substantially. Where designated use is changed or estimated costs have changed substantially, the head of such agency shall also indicate the reasons therefor.

Other agencies having responsibilities with respect to various purposes of the project, such as power marketing, rate approval, reclamation, navigation, flood control regulation, etc., shall be afforded full opportunity to consult and make their views known at both these stages in the determination of the cost allocation.

13. Reimbursement and sharing of costs. For the purposes of this Circular, it is essential that definite determinations be made as to which part of the financial costs of a proposed program or project will be reimbursed to the Federal Government, which will be borne by others than the Federal Government, and which will not be reimbursed. With respect to financial costs to be reimbursed and cash contributions to be made, the proposed source of funds therefor shall be clearly indicated. Where cash contributions are required, such requirement shall be expressed as a percentage of the construction costs of the program or project, rather than in dollars. Where repayment is to be made over a period of time, a tentative schedule of payments

(No. A-47)

to be made to the Federal Government shall be established. With respect to any further financial costs to be borne by others, such as contributions of property, the nature of the cost-sharing arrangements to be entered into by the Federal Government shall be indicated. With respect to nonreimbursable costs, the authority relied upon in declaring such costs to be nonreimbursable shall be clearly indicated; where no legislative authority exists, justification shall be presented for proposing that the costs be considered nonreimbursable.

14. Length of repayment period. Proposals for repayment of the Federal investment in a program or project will be reviewed in accordance with the following standards:

- a. Rates and other charges for the products or services of a program or project shall be set so that repayment of the initial Federal investment in the program or project can be accomplished within a period equal to the useful economic life of the proposed program or project, but not longer than 50 years, following the date on which the head of the sponsoring agency determines that benefits from the program or project will be available to the beneficiaries. This same period of time with the same limitation shall be used for computing benefits and costs of the proposed program or project.
- b. In the case of a major replacement, modification, or addition to a project, the cost thereof shall be reimbursed within (1) the estimated useful economic life of such replacement, modification, or addition, (2) the estimated remaining useful economic life of the project to which it is an addition, or (3) 50 years, whichever is least, following the date on which the head of the sponsoring agency determines that benefits from the replacement, modification, or addition will be available to the beneficiaries. In the case of a major replacement, modification, or addition to a project serving power or domestic, municipal, or industrial water supply, the unliquidated balance of the initial Federal investment allocated to such purpose, together with any unpaid interest or other expenses may be proposed for re-scheduling of repayment over the same period of time as is proposed for repayment of the cost of the major replacement, modification, or addition.
- c. Where a major new power or domestic, municipal, or industrial water supply project or major portion thereof is to be operated in conjunction with, or as a part of, an existing system of projects serving the same purpose or purposes, the portion of the initial construction costs of the existing system allocated to that purpose which is unliquidated at the time such new project or portion of a

(No. A-47)

Next page is Sec. 611  
88 (18)

project is to be added, together with any unpaid interest or other expenses, may be combined with those costs of the new project or portion thereof allocated to that purpose; and the rates and charges required for the repayment of the total combined costs may be computed so as to repay these costs over the useful economic life of the new project or portion thereof but in not to exceed 50 years, provided that the system to which the new project is to be added has a remaining useful economic life at least equal to that of the proposed new project. For each proposed addition to an existing system, there should be a separate estimate of the benefits, economic and financial costs, and the revenues from or attributable to the new project or portion thereof.

15. Determination of interest rate on Federal investment.

Interest for purposes of estimating reimbursements shall be calculated at a rate based upon the average rate of interest payable by the Treasury on interest-bearing marketable securities of the United States outstanding at the end of the fiscal year preceding such computation which, upon original issue, had terms to maturity not more than 12 months longer or 12 months shorter than the economically useful life of the project or part thereof in which Federal investment is to be made. Where the economically useful life of the project is expected to be longer than 15 years, the rate of interest shall be calculated at a rate based upon the average rate of interest payable by the Treasury on obligations, if any, outstanding at the end of the fiscal year preceding such computation, which, upon original issue, had terms to maturity of 15 years or more.

If there are no such outstanding interest-bearing marketable securities of the United States with original terms to maturity not more than 12 months longer or 12 months shorter than the economically useful life of the project, or with original terms to maturity of 15 years or more, interest shall be calculated at a rate equal to the rate of interest payable by the Treasury on the issue of interest-bearing marketable securities of the United States outstanding at the end of the fiscal year preceding such computation which, upon original issue, had terms to maturity shorter than, but most nearly equal to, the economically useful life of the project.

Where the average rate calculated by the methods prescribed above is not a multiple of 1/8 of 1 percent, the rate of interest shall be the multiple of 1/8 of 1 percent next lower than such average rate.

16. Additional standards relating to power.

- a. Proposals for the incorporation in a program or project of power features will be reviewed in accordance with the criterion that total financial costs allocated to power shall

be fully reimbursable. For this purpose, the project report shall include an estimate of the revenues to be obtained from the sale and disposition of the program or project power and any other funds which may be derived from the generation, transmission, sale, and disposition of such power, or activities incidental thereto.

- b. Where a program or project contemplating immediate or eventual construction of power facilities is proposed for legislative authorization, the report on such program or project shall include a statement of the views thereon of the Federal Power Commission, the agencies concerned with marketing power produced at Federal plants in the region, and other appropriate agencies. Agencies submitting such views shall be given reasonable notice by the agency proposing a program or project involving power facilities of the latter agency's intention to complete the evaluation of the program or project. If the views of the agencies referred to above are not made known to the agency proposing the project within 90 days after completion of the main program or project report, the head of the agency proposing the program or project may submit the report thereon to the Bureau of the Budget without an accompanying statement of the views of these agencies.

Such statements will be used in determining (1) the need for the additional power which such program or project would make available, (2) the cost of such additional power at load centers, compared with the cost of equivalent power from alternative sources in the same region, (3) the revenues which would be derived from the sale of the additional power, (4) the effect of the program or project on the rate of depletion of the fuel resources of the region or Nation, and (5) recommendations as to the timing of the installation of generating and other power facilities as part of, or incidental to, the program or project.

17. Additional standards relating to flood control.

- a. In the preparation of any program or project report concerned with flood control, the head of the agency proposing such program or project shall give consideration in the report to all methods of preventing or reducing flood damage in each particular instance and shall include a report on the most effective and most economical choice or combination of one or more of the following methods of alleviating flood damage:

- (1) Flood plain development and redevelopment, relocation, and zoning.

(No. A-47)

Next page is Sec. 611  
(20)

- (2) Sedimentation and runoff control.
- (3) Storage of flood waters on cultivated fields, other watershed lands, or underground through appropriate measures.
- (4) Levee and flood wall construction.
- (5) Reservoir storage.
- (6) Channel improvement and rectification, bank stabilization, and floodways and diversions.
- (7) Flood forecasting.
- (8) Such other measures as will result in effective flood damage prevention or control.

If the head of the agency preparing such a report finds that flood damage can be prevented most effectively and economically through adoption by States, local governments, or districts of programs for flood plain development and redevelopment, relocation, and zoning, or other similar measures, either in substitution for, or as a supplement to, construction of flood control works, he shall include in his project report information as to the extent to which it may be feasible to enter into arrangements with such States, local governments, or districts providing for Federal assistance to them in carrying out such measures. Such information shall be included on the assumption that the State, local government, or district in question will be authorized to engage in such development, relocation or zoning. As a guide for proposing such arrangements, the share of the cost which may be borne by the Federal Government as assistance to States and local governments for such measures shall be no more than the share of costs which the Federal Government would bear in prosecuting the most economical alternative method of obtaining similar flood control benefits.

- b. The report on any program or project having significant main stem flood control benefits, except for those of the Tennessee Valley Authority, shall include a statement of the views of the Secretary of the Army or the Chief of Engineers on such aspects of the program or project. The report on any main stem program or project having flood control benefits, except for those of the Tennessee Valley Authority, shall include a statement by the Secretary of Agriculture indicating the effect any existing or potential flood prevention programs in the tributaries and headwaters of the river would have on the economic justification and feasibility of the main stem program or project.

(No. A-47)

Next page is Sec. 611  
(21)

It would be expected that the views of the Corps of Engineers, the Department of Agriculture, and/or any other agency concerned would, ordinarily, be reconciled prior to the submission of a project report to the Bureau of the Budget.

- c. Where benefits of the type described in paragraph 8b of this Circular are attributed to a local flood control project, the project report will be reviewed in accordance with the criterion that there shall be a payment or contribution toward the construction costs of the project equal to at least 50 percent of an amount determined by applying to the total construction costs of the project the ratio of the particular land enhancement benefits involved to total monetary primary benefits as estimated in the evaluation report. To the extent feasible, a payment or contribution toward the costs of the program or project shall also be made where benefits of the type described in paragraph 8b of this Circular are attributed to other flood control or flood prevention programs or projects. In determining the payment or contribution that should be required in these cases, the responsible agency should consider the value of benefits to local beneficiaries. The evaluation report shall explain how the portion of the cost to be borne by local beneficiaries was determined.

18. Additional standards relating to reclamation.

- a. Appraisal of reclamation benefits. The report on any program or project having significant reclamation benefits shall include a statement of the views of the Secretary of Agriculture on the economic aspects of such phases of the program or project and his estimates of the effect of such reclamation benefits on the short-range and long-range agricultural needs of the Nation and the region in which the program or project is located, and the place of the program or project within the framework of a desirable long-range program to meet the Nation's and the region's estimated requirements for food, fiber, and other agricultural commodities.

The Secretary of Agriculture shall be given reasonable notice by the head of the agency proposing any program or project having significant reclamation benefits of the latter's intention to complete an evaluation of the program or project. If the report of the Secretary of Agriculture on the economic aspects of the reclamation phases of a program or project is not available within 90 days after the completion of the main program or project report, the head of the agency proposing the program or project may submit the report thereon to the Bureau of the Budget without an accompanying report from the Secretary of Agriculture.

- b. Repayment of irrigation costs. Consistent with the standards of this Circular relating to repayment, irrigation project reports submitted for authorization by Congress may propose repayment of irrigation construction costs within 50 years, with allowance for an additional development period of not to exceed 10 years.

Note.--Where irrigation projects are authorized administratively by the Secretary of the Interior under present law, repayment of the construction cost is based on the ability of the water users to pay over a period of 40 years, with allowance for an additional development period of not to exceed 10 years, except that a longer period may be used where the costs are to be returned under contracts entered into pursuant to section 9(e) of the Reclamation Project Act of 1939. Projects in which the returnable allocations, together with non-returnable allocations permitted by existing law, do not equal construction costs may be authorized only by act of Congress.

Pending the enactment of general legislation dealing with the use of the interest component to show assistance in the retirement of construction costs allocated to irrigation, proposed irrigation project reports will be reviewed in accordance with the following criteria:

- (1) Irrigation aspects of proposed projects shall meet a test of economic justification made in accordance with the principles, standards, and procedures set forth in this Circular.
- (2) Net revenues from other purposes associated with the project may be proposed for use in helping to repay costs allocated to irrigation.
- (3) Where the cost allocated to irrigation is in excess of the sum of the anticipated repayments by the water users and other identifiable irrigation beneficiaries, and any net revenues of any separable purposes of the project, the project report shall identify these excess costs and may propose that they be borne by the Federal Government as a subsidy to irrigation. Where a Federal subsidy is proposed, either by use of the interest component or otherwise, the project report shall clearly show the amount and composition of such subsidy, and the letter of transmittal to the Congress shall contain proposed authorizing language stating the maximum amount of such subsidy to irrigation which would be borne by the Federal Government. As soon as feasible,

(No. A-47)

Next page is Sec. 611  
(23)

arrangements will be made to show any such subsidy in the annual Budget presentation to the Congress.

Note.--In determining financial feasibility of irrigation projects, the Department of the Interior has construed Federal reclamation laws to permit the use of interest payments on the construction cost allocated to power or water supply to show assistance in the retirement of construction costs allocated to irrigation that are in excess of the ability of the water users to repay. There has been no general legislation specifically dealing with this policy. The Bureau of the Budget, in clearance of project reports, has never specifically approved or disapproved the policy of applying the interest component to assist in the retirement of costs allocated to irrigation. The use of the interest component for this purpose raises several important policy problems: (a) the interest component represents an indefinite type of subsidy, (b) the interest component may be used to make a project appear to be financially feasible which is not economically sound, and (c) the size of the interest component necessarily varies with the size of the power or water supply investment, and, therefore, the use of the interest component discriminates against irrigation projects which are not directly associated with power or water supply projects or in which such investments are small in relation to the size of the total project.

19. Additional standards relating to recreation. Proposals for recreational aspects of Federal water resources development programs and projects will be reviewed in accordance with the following standards:

- a. Recreation potentialities shall be given full consideration in the preparation and evaluation of proposed water resources programs and projects. The financial costs of those aspects of surveys, investigations, and planning required to provide a full and complete understanding of the recreation potentialities of these programs and projects shall be treated as a nonreimbursable Federal expense.
- b. Recreation costs and benefits shall be dealt with on an incremental basis; i.e., costs specifically incurred for and benefits directly creditable to recreation shall be evaluated and considered apart from other project costs and benefits. Only the incremental costs expected to be incurred in providing recreational facilities as described in the following paragraphs e and f shall be allocated to recreation.

- c. Potential damages to existing recreation areas, facilities, or values shall be recognized in planning for water resources programs and projects, and the financial costs of prevention of such damage, or the replacement of such areas or facilities, to the extent practicable, shall be clearly set forth. All such costs shall be considered as joint or common costs and equitably allocated among the major purposes served by the project.
- d. Minimum basic facilities and services for protection of the program or project area and the accommodation or protection of the visiting public, usually at the location of the dam site, shall not be considered recreational facilities, but necessary adjuncts to the construction of Federal projects. The costs of these facilities and services shall be considered as joint or common costs and allocated to the major purposes for which such projects are constructed.
- e. When modification in the design of a project or additional development in the project area, including access roads, is required in order to make recreational values available to the public, such modification or development shall be included in the project proposal only if:
  - (1) The States or local governments or other beneficiaries agree to repay the full cost thereof; or
  - (2) Such values are clearly indicated to be of national significance in accordance with criteria set forth in paragraph g following; and if either (a) the work is proposed to be authorized as a part of the national park or national forest programs for this area and is to be financed by appropriations made for these programs, or (b) the letter transmitting the proposed report to the Congress contains proposed authorizing language stating the maximum amount of such cost which would be borne by the Federal Government.
- f. Where the public interest in the protection and preservation of recreation values of any water resources program or project require the purchase or the setting aside of a limited amount of additional land therefor, any costs thereof may properly be considered a Federal expense and allocated to recreation development. Where such recreation values are not of national significance, however, the costs of such purchase or setting aside of lands shall be recommended as a Federal expense only if State or local governments have, through an appropriate official, indicated an unwillingness or inability to protect and preserve such values. The acquisition of lands by the Federal Government to protect recreation values shall ordinarily be restricted to areas to which access roads

are likely to be built. In cases where recreation values are of State or local significance, the lands acquired by the Federal Government shall be sold, leased or licensed, or (in exceptional cases) granted, under appropriate rules or regulations, to State or local governments for development as soon as possible. All funds derived from such sales or leases shall be deposited in the general fund of the Treasury.

There shall be provided a specific list and description of such lands recommended for acquisition or withdrawal and the reasons why their acquisition or withdrawal is required to protect or preserve recreation values.

g. In determining whether the recreation resources of a Federal water resources project area are of national significance, the following criteria shall be considered:

- (1) The water resource project itself is such as to make it a subject of continuing Nation-wide public interest.
- (2) The presence within or adjacent to the water resource area of outstanding scenic, historical, scientific, or archeological values of interest to the general public makes development of the recreation resource a matter of national interest.
- (3) The recreation area, after development, will probably be used by a substantial number of residents of States other than the State or States in which the project area is located.
- (4) The relation and proximity of the water resource project area to a national park, monument, national forest, or wilderness area is such that the recreation development will supplement the program on those federally administered areas.

20. Additional standards relating to domestic, municipal, and industrial water supply. Proposals for water supply aspects of Federal water resource development programs and projects will be reviewed in accordance with the following criteria:

- a. Domestic, municipal, industrial, and other similar water supply shall be considered primarily a local and State responsibility. The needs of communities and industries for water supply shall, however, be given full consideration in the investigations, surveys, and preparation of plans for Federal river development programs and projects.

(No. A-47)

Next page is Sec. 611  
(26)

- b. Proposals for the incorporation in a Federal program or project of provisions for domestic, municipal, or industrial water supply shall be made only if the total financial costs to be allocated to this purpose will be fully reimbursed by the States, local governments, districts, or persons served.

21. Provision in Federal water resources programs and projects for future requirements. Where a significant saving will result from inclusion in the original plan for a program or project of additional or enlarged structures, facilities, or parts thereof which will serve anticipated future non-Federal needs, as, for example, excess storage capacity in reservoirs for municipal or industrial water supply, provision for such inclusion may be made if:

- a. The cost of including the facilities for anticipated future needs, including the properly allocable part of the joint costs of the program or project, represent not more than 15 percent of the total construction costs of the program or project.
- b. All financial costs of such additions will be repaid within 50 years after the date on which initial use of such addition is begun, regardless of the degree to which the full capacity provided is utilized during that period. In arriving at the financial costs of such additions, interest on the construction costs during the period of deferral of any use may be waived.
- c. Reasonable assurance is given by local interests at the time the project report is prepared that initial use of the proposed addition to the program or project will begin within not more than 10 years, and a repayment contract is signed by local interests prior to the beginning of construction agreeing to start repayment within such 10-year period.

By direction of the President:

FREDERICK J. LAWTON  
Director

Section 612. USE OF FOREIGN CURRENCIES.

FAA Sec. 612 is similar in purpose to MSA Sec. 505 in that it establishes a general basis for disposition and use of U.S.-owned foreign currencies not otherwise provided for. Unlike MSA Sec. 505 it applies only to currencies received as a result of furnishing economic assistance under the MSA and the FAA and not military assistance. It applies only to the extent not otherwise provided for in the FAA or in other acts. It does not touch the bulk of foreign currencies owned by the U. S. Government which are generated under P. L. 480. The other principal exceptions are FAA Sec. 222(d), which provides that funds derived from sales of foreign currencies may be used to discharge investment guaranty liabilities; MSA Sec. 402, which authorizes use without a requirement for appropriation of currencies derived from sales of surplus agricultural commodities under the MSA for the purposes of the MSA with emphasis on purposes similar to section 104 of P. L. 480; MSA Sec. 502(a), which makes similar provision for the use of foreign currency proceeds from the sales of surplus agricultural commodities made under Sec. 550 of the MSA of 1951; and MSA Sec. 502(b), which makes foreign currency available to members and committees of Congress for official travel expenses. (HCFA Rep. p. 70.) Sec. 612 does not apply to country-owned counterpart funds.

The currencies with which Sec. 612 is primarily concerned are received mainly from loans repayments under the MSA, including the DLF, and the FAA. Foreign currencies covered explicitly are those received either (1) as a result of the furnishing of nonmilitary assistance under the MSA or any act repealed by the MSA and unobligated on the date prior to the effective date of the FAA (September 4, 1961), or (2) on or after the effective date of the FAA, as a result of the furnishing of nonmilitary assistance under the MSA or any act repealed thereby, or (3) as a result of the furnishing of assistance under the economic assistance provisions of the FAA (Part I).

The currency subject to Sec. 612 will be subject to appropriation action and will be used according to the following priorities:

- (1) Such currencies will be available first for use under authority of section 105(d) of the Mutual Educational and Cultural Exchange Act of 1961 or any other act relating to educational and cultural exchanges.
- (2) Next they will be available for sale by the U. S. Treasury to U. S. Government agencies in exchange for dollars otherwise appropriated for payment of agency obligations outside the U. S., with the dollars so received being deposited into miscellaneous receipts of the Treasury.
- (3) To the extent such currencies are in excess of U. S. Government requirements for payments of obligations outside the United States, as those requirements are determined by the President, they may be used in furtherance of the purposes of economic

10/17/61

Sec. 612  
(2)

assistance (FAA Part I), in such amounts as may be specified from time to time in appropriations acts.

Cross References: (1) FAA Sec. 508 (use of foreign currencies derived from military assistance). (2) FAA Sec. 614(a) (Presidential waiver authority applicable to FAA Sec. 612). (3) FAA Sec. 642 (continues MSA Sec 402, 502(a) and 502(b) in effect).

Next page is Sec. 613  
(1)

10/17/61

Sec. 613  
(1)

Section 613. ACCOUNTING, EVALUATION AND REPORTING OF FOREIGN CURRENCIES.

FAA Sec. 613 is new. It establishes new rules and criteria for accounting and reporting procedures regarding foreign currencies owed to or owned by the United States.

FAA Sec. 613(a) gives the Secretary of the Treasury the responsibility, under the direction of the President, for these functions and authorizes him to issue regulations binding upon all agencies of the Government.

FAA Sec. 613(b) gives the Secretary of the Treasury sole authority to establish the exchange rates through which all foreign currencies or credits are to be reported by all government agencies.

FAA Sec. 613(c) requires each agency or department to report to the Secretary of the Treasury an inventory as of June 30, 1961, showing all foreign currencies on hand which were acquired without payment of dollars. The Secretary of Treasury is to consolidate these reports as of June 30, 1961, and submit a consolidated report to Congress. Thereafter, semi-annual similar reports are to be submitted in a similar manner. These reports are limited to foreign currencies "acquired without payment of dollars" in order to avoid the implication that the foreign currency report should include currencies which have been purchased by agencies for dollars to meet their current expenditures abroad and which are included in their dollar accountability. The SCFR stated that this section "results from a growing dissatisfaction . . . regarding the accounting methods used for foreign currencies and a growing feeling of frustration in dealing with reports on the value of these currencies owned by the United States." (SCFR Rep. pp. 32-33; H. Conf. Comm. Rep. pp. 58-59).

Next page is Sec. 614  
(1)

100

Section 614. SPECIAL AUTHORITIES.

FAA Sec. 614(a) is similar to the first sentence of MSA Sec. 451(a). It permits in any fiscal year (1) the authorization of the use of funds made available for use under the FAA and the furnishing of assistance under FAA Sec. 510 in total amounts not to exceed \$250,000,000, and (2) the use of up to \$100,000,000 of foreign currencies accruing under the FAA or any other law, all without regard to the requirements of certain laws described below, when such use is in furtherance of any of the purposes of such laws and the President determines that such authorization is "important to the security of the United States." Not more than \$50 million may be allocated to any single country in any one year pursuant to this authority, and the HCFA stated that this limit should apply to international organizations as well (HCFA Rep. p. 71).

The analysis of this section may be divided into three parts: (1) For what types of funds or authority is this type of waiver available; (2) what laws may be waived; and (3) for what purposes may the funds or authority covered by a waiver be used.

(1) Funds and authority covered: Included are the FAA Sec. 510 authority plus dollars made available for the FAA under any provision of the FA Approp. Act 1962 (including obligated and unobligated balances continued available from FY 1961 into FY 1962). Eligible local currencies are any U. S.-owned currencies including DLF and other loan repayments, proceeds of MSA Sec. 402 transactions, U. S.-use counterpart funds, plus funds accruing to the U. S. from P.L. 480 sales.

(2) Laws subject to waiver:

(a) The FAA. FAA Sec. 201(c), however, provides that the authority of Sec. 614(a) may not be used to waive the requirements of the development lending title (FAA Secs. 201-205). Any other conditions applicable to development loans contained outside FAA Secs. 201-205 may thus be waived under Sec. 614(a).

(b) Any acts appropriating funds for the purposes of the FAA, including interim or temporary appropriations as well as regular appropriation acts or amendments thereto.

(c) Any law relating to receipts or credits accruing to the U. S. and amendments thereto. This would include (i) Sec. 1415 of the Supp. Appropriation Act of 1953 which requires an appropriation act before foreign credits owned by the U. S. shall be available for expenditure, and (ii) similar provisions of P.L. 480 Sec. 104. This waiver authority will overlap with the authority contained in the

next-to-last proviso of P.L. 480 Sec. 104 which permits the waiver of the applicability of Sec. 1415 of the Supp. Appropriation Act of 1953 to grants under P.L. 480 Sec. 104(d)(e) and (f) and to 10% of the proceeds of P.L. 480 sales and is held by the Bureau of the Budget, although the waiver authority for grants under Sec. 104(e) will be transferred to AID. The relationship between these ~~two~~ authorities is not yet clear.

(d) Mutual Defense Assistance Control Act of 1951 (Battle Act) and amendments thereto. The inclusion of the Battle Act among the laws which may be waived by this section is not a change from the MSA which covered that act by the following language: "or any other Act for which funds are authorized by this Act." (MSA Sec. 411(c) authorized the use of funds to administer the Battle Act; see also FAA Sec. 703).

(3) Purposes for which funds or authority covered by a waiver are available: The statute states that funds or authority which have been the subject of a waiver may be used in furtherance of any of the purposes of "such Acts." It does not explain further whether the phrase "such Acts" includes both the acts under which the funds and authority were made available and the acts which are subject to waiver. A literal interpretation requires that the purposes of both categories be considered as eligible, but as a practical matter it is unlikely that this question will be a problem. Probably the most important consequence of this language is that funds or authority subject to a waiver may be used for any purpose found in the FAA, the MSA or P.L. 480.

The HCFA stated that the purpose of the authority regarding the \$100 million in local currencies is primarily to make possible the use of such currencies for humanitarian purposes in countries where substantial amounts of foreign currencies have been or are being deposited for U. S. use and that the object is to permit the initiation of projects which will contribute directly and immediately to alleviating the living and working conditions of the people; it further stated that it is not anticipated that this authority will be used to finance "grandiose or long-term projects" (HCFA Rep. p. 71).

FAA Sec. 614(b) is derived from MSA Sec. 403. It provides that, whenever the President determines it to be important to the national interest, he may use funds available for the purpose of supporting assistance in order to take any actions to meet the responsibilities or objectives of the United States in Germany including West Berlin, and without regard to such provisions of law as he determines should be disregarded to achieve this purpose. Heretofore the President has had

11/15/16

Sec. 614  
(3)

such authority within a stated monetary limit (\$6,750,000 in FY 1961). No ceiling has been inserted this year because of the uncertainty of the requirements of West Berlin and the belief, as stated by the SCFR, that it is important that these requirements be met and that the President have sufficient authority to do so swiftly and effectively (SCFR Rep. p. 33).

FAA Sec. 614(c) is derived from the third sentence of MSA Section 451(a). It authorizes the President to use amounts not to exceed an aggregate of \$50 million of FAA funds pursuant to his certification that it is inadvisable to specify the nature of the use of such funds, in which case such a certification shall be deemed to be a sufficient voucher for such amounts.

Cross References: (1) FAA Sec. 634 requires reports to Congress about any determinations pursuant to the authority of FAA Sec. 614. (2) FAA Sec. 642(a)(2) continues in effect MSA Sec. 451(c) which authorizes the use of the President's special authority under MSA Sec. 451(a) to finance programs "of information, relief, exchange of persons, education, and resettlement, to encourage the hopes and aspirations of peoples who have been enslaved by communism." This authority has been used to finance the Cuban refugee programs (see H. Conf. Comm. Rep. p. 72).

Next page is Sec. 615  
(1)

103

10/17/61

Sec. 615  
(1)

Section 615. CONTRACT AUTHORITY.

FAA Sec. 615, except for the substitution of the preposition "of" for "in", is identical to MSA Sec. 515. It authorizes the granting in any appropriation act of authority to enter into contracts, within the amounts authorized in the FAA to be appropriated, creating obligations in advance of appropriations. No appropriation act has so far responded to this authorization.

Next page is Sec. 616  
(1)

104

10/17/61

Sec. 616  
(1)

Section 616. AVAILABILITY OF FUNDS.

FAA Sec. 616 is similar to MSA Sec. 507. It states that, except as otherwise provided in the FAA, funds shall be available to carry out the act as authorized and appropriated to the President each fiscal year. It simply makes clear that no authorization for appropriations is contained in the FAA which is not specifically set out. It does not affect the multi-year authorization contained in the development loan provisions, the two-year authorization for military assistance in FAA Sec. 504, or the availability of appropriations without fiscal year limitations where such are authorized. Additional funds for development grants, investment surveys, contributions to international organizations, supporting assistance, the contingency fund and military assistance, must be authorized, as well as appropriated, annually.

The exceptions contained in MSA Sec. 507 for MSA Secs. 414 (munitions control) and 416 (encouragement of travel) have not been continued. MSA Sec. 416 is repealed by FAA Sec. 642. The exception for MSA Sec. 414 is unnecessary since such activities are now provided for in the Department of State appropriations. (HCFA Rep. p. 73).

Next page is Sec. 617  
(1)

105

Section 617. TERMINATION OF ASSISTANCE.

FAA Sec. 617 is derived from MSA Sec. 503(a). It provides that, unless terminated sooner by the President, assistance under any provision of the FAA may be terminated by a concurrent resolution of Congress and that FAA funds shall remain available for a period not to exceed twelve months from the date of any termination of assistance for the necessary expenses of "winding up" programs relating thereto. This is different from MSA Sec. 503(a) in that it does not contain a requirement that the President terminate assistance whenever certain specified conditions are met. Such a provision was unnecessary because the President has inherent power to terminate assistance without it as an aspect (1) of his statutory authority to furnish aid, and (2) of his constitutional authority to conduct foreign relations. The Department of Justice views the concurrent resolution provision as presenting difficult questions of constitutionality.

Sec. 617 provides for the continued availability of funds for twelve months after termination for the "winding up" of programs. This provision is new. The term "winding up" rather than "liquidating" (the term used in the MSA) is intended to express more clearly the intent of the law that when appropriate, certain programs may be completed after a decision to terminate rather than to require their immediate cessation. (HCFA Rep. pp. 73-74).

Omission and Change: A provision for the termination of assistance to countries which have expropriated American property and have failed for six months to take steps to discharge its obligations under international law to the former owners (formerly MSA Sec. 503(b)) has been omitted. See FAA Sec. 620(c) for a related provision.

The requirement of MSA Sec. 503(c) that the President recommend plans for progressive reduction or termination of grants for defense support or special assistance is now found at FAA Sec. 634(e) and now applies to all "bilateral grant economic assistance."

Cross Reference: See FAA Sec. 624(e)(6) for the authority of the Inspector General, Foreign Assistance, to terminate assistance. See FAA Sec. 634(c) for termination of country program activities as a result of a failure to give requested information to Congressional committees and the GAO.

Section 618. ECONOMIC ASSISTANCE TO LATIN AMERICA.

Section 618 is new. It provides that development loan and development grant assistance to Latin America shall be furnished in accordance with the principles of the Act of Bogota signed on September 13, 1960. It states further that the President shall, when requested by a friendly country and when appropriate, assist in fostering measures of agrarian reform, including colonization and redistribution of land, with a view to ensuring a wider and more equitable distribution of the ownership of land. The Act of Bogota which was signed by nineteen of the twenty-one American Republics (all except Cuba and the Dominican Republic) sets up the framework for a broad program of social reform and economic progress. It provides for such things as land and tax reform, agricultural credit institutions, and the improvement of housing and community facilities, educational systems and training facilities, and public health. As stated by the SCFR: "It provides, in short, for the kinds of institutional changes which, in the opinion of the Committee, are indispensable for sustained economic growth in Latin America. The committee does not believe that outside assistance to Latin America would be effective in the absence of such changes, and hence it has added to the bill the requirement of section 618." (SCFR Rep. pp. 34-35.)

Cross References: See FAA Secs. 201 and 211 on self-help requirements applicable to development lending and development grants.

Next page is Sec. 619  
(1)

10/17/61

Sec. 619  
(1)

Section 619. ASSISTANCE TO NEWLY INDEPENDENT COUNTRIES.

FAA Sec. 619 is new. It states that nonmilitary assistance under the FAA to newly independent countries shall to the maximum extent appropriate in the circumstances of each case be furnished through multilateral organizations or in accordance with multilateral plans, on a fair and equitable basis with due regard to self-help. The SCFR stated:

"The purpose of this section is to prevent, insofar as possible, the United States from assuming continuing and increasing obligations through bilateral arrangements with the rapidly emerging new countries of the world. The committee agrees that these countries need help and should have help. But it also believes that this is not, and should not be, the sole or even the major responsibility of the United States. Bilateral arrangements do not necessarily provide the most effective means of extending help and of accomplishing U. S. objectives. The other developed nations of the world, particularly the members of the Development Assistance Group, also have a responsibility and an interest in seeing the new countries make a success of their ventures into statehood." (SCFR Rep. p. 35).

The section applies to assistance furnished either through multilateral organizations such as the U.N. or in accordance with multilateral plans such as might be agreed to by the OECD. The Conference Committee described this section as "suggestive" and not "definitive". (H. Conf. Comm. Report p. 60).

Cross References: (1) FAA Sec. 205 (channeling of development loans through the International Development Association), (2) FAA Secs. 301-303 (international organizations).

Next page is Sec. 620  
(1)

108

Section 620. PROHIBITIONS AGAINST FURNISHING ASSISTANCE TO CUBA  
AND CERTAIN OTHER COUNTRIES.

FAA Sec. 620(a) is similar to MSA Sec. 552. It provides that no assistance shall be furnished under the FAA to the "present Government of Cuba," (i.e. the Castro regime). It authorizes the President to establish and maintain a total embargo upon all trade between the U. S. and Cuba. It differs from MSA Sec. 552 which provided that no assistance should be furnished "unless the President determines it to be in the national and hemispheric interest of the United States" to do so. MSA Sec. 552 was interpreted to apply only to assistance furnished directly to Cuba and not to assistance furnished indirectly through an international organization such as the United Nations Special Fund. FAA Sec. 620(a) may be waived under FAA Sec. 614. The authorization for a total embargo possibly duplicates authority existing under other legislation. (See H. Conf. Comm. Report p. 60).

Cross Reference: FA Appropriation Act, 1962, Sec. 109  
(no assistance to any country giving certain types of aid to Castro regime without Presidential determination).

FAA Sec. 620(b) is new. It provides that no assistance shall be furnished under this Act to the Government of any country unless the President determines that such country is not dominated or controlled by the international communist movement. As stated by the HCFA, Sec. 620(b) "makes clear that the purposes of this bill and the programs carried out under it are directed towards strengthening countries and areas that are not dominated or controlled by the international communist movement." (HCFA Rep. p. 74). See also the references throughout the FAA to "friendly" countries, which are interpreted as restricting assistance in a manner similar to Sec. 620(b).

On October 11, 1961, the Secretary of State, to whom such authority had been delegated, signed the following determination which was limited to countries actually receiving assistance from the U. S. and involved neither favorable nor unfavorable implications for countries not on the list:

Pursuant to section 620(b) of the Foreign Assistance Act of 1961, I hereby determine, effective September 30, 1961, that the countries named in the attached list are not dominated or controlled by the international Communist movement. This determination is limited to those countries the governments of which are now receiving assistance from the United States.

Next page is Sec. 620  
(2)

10/17/61

Sec. 620  
(2)

List of Countries

FAR EAST

Australia  
Burma  
Cambodia  
China (Taiwan)  
Indonesia  
Japan  
Korea  
Laos  
Malaya  
Philippines  
Thailand  
Vietnam

NEAR EAST AND SOUTH ASIA

Afghanistan  
Ceylon  
Cyprus  
Greece  
India  
Iran  
Iraq  
Israel  
Jordan  
Lebanon  
Nepal  
Pakistan  
Saudi Arabia  
Turkey  
United Arab Republic  
Yemen

EUROPE

Austria  
Belgium  
Denmark  
Germany  
France  
Iceland  
Italy  
Luxembourg  
Netherlands  
Norway  
Portugal  
Spain  
United Kingdom  
Yugoslavia

AFRICA

Cameroun  
Central African Republic  
Chad  
Dahomey  
Ethiopia  
Gabon  
Ghana  
Guinea  
Ivory Coast  
Kenya  
Liberia  
Libya  
Malagasy Republic  
Mali  
Morocco  
Niger  
Nigeria  
Republic of the Congo (Brazzaville)  
Republic of the Congo (Leopoldville)  
Rhodesia and Nyasaland, Federation of  
Senegal  
Sierra Leone  
Somali Republic  
Sudan  
Tanganyika  
Togo

AFRICA (Cont'd.)

Tunisia  
Uganda  
Upper Volta

LATIN AMERICA

Argentina  
Bolivia  
Brazil  
British Guiana  
British Honduras  
Chile  
Colombia  
Costa Rica  
Ecuador  
El Salvador  
Guatemala  
Haiti  
Honduras  
Jamaica  
Mexico  
Nicaragua  
Panama  
Paraguay  
Peru  
Surinam  
Uruguay  
Venezuela  
West Indies

Next page is Sec. 620  
(3)

110

10/17/61

Sec. 620  
(3)

FAA Sec. 620(c) is new. It provides that no assistance shall be provided under the FAA to the government of any country which is indebted to any United States citizen for goods or services furnished, where such citizen has exhausted available legal remedies and the debt is not denied or contested by such government. The phrase "for goods or services furnished" was included to make clear that the debt must be for goods and services as distinguished from government bonds or similar obligations which may be in default. (H. Conf. Comm. Rep. p. 61). What constitutes "available" legal remedies will require further interpretation.

FAA Sec. 620(d) is new. It provides that no development loans for construction or operation of any productive enterprise in any country where such enterprise will compete with U. S. enterprise unless that country agrees that it will establish appropriate procedures to prevent the exportation for use or consumption in the U. S. of more than 20 percent of the annual production of such facility during the life of the loan. (H. Conf. Comm. Rep. pp. 61-62). The application of the section is limited to enterprises "where such enterprise will compete with U. S. enterprise," that is, to situations where the product of the enterprise being assisted will compete in the U. S. market directly with the product of the United States (H. Conf. Comm. Rep. p. 62). If the agreement is not carried out, the President is authorized to establish necessary import controls to effectuate the agreement. He may also waive the restrictions of this section where he determines that such waiver is in the national security interest (see FAA Sec. 614 also). One problem which may develop at some time in the future is how to relate the requirement of FAA Sec. 201 for dollar repayable loans with this requirement which will have the practical effect of keeping recipient countries from earning dollars.

Cross Reference: FAA Sec. 620 is waivable under FAA Sec. 614(a).

Next page is Sec. 621  
(1)

III

## CHAPTER 2 - ADMINISTRATIVE PROVISIONS

This chapter authorizes a major reorganization of the aid program. It provides for the establishment of the AID as a new agency which will have responsibility for non-military aid functions and will combine under the direction of a single Administrator the present Washington and field operations of the ICA, the DLF, the food-for-peace program in its relations with other countries, the local currency lending activities of the Export-Import Bank, and the related staff and program services now provided by the Department of State and the ICA. The new agency will be headed by an Administrator with the rank of an Under Secretary and will also have two persons with the rank of Deputy Under Secretary and nine with the rank of Assistant Secretary.

This chapter also contains standard provisions on interagency relationships and use of funds and new provisions designed to improve administration and personnel performance such as authority to select out marginal personnel and to provide more extensive personnel benefits including dependent education facilities, medical care, orientation and language training, and rest and recuperation travel.

Section 621. EXERCISE OF FUNCTIONS.

FAA Sec. 621(a). This subsection is derived from MSA Sec. 521(a). It recognizes, as did MSA Sec. 521(a) that, although ultimate authority in the FAA is vested in the President as chief executive and as the officer constitutionally responsible for the conduct of foreign affairs, the President cannot personally exercise all of the functions vested in him by the FAA and enables him to exercise those functions through any agency or officer of the United States, who in turn are authorized to promulgate such rules and regulations as may be necessary to carry out those functions.

FAA Sec. 621(a) is broadened in two respects from MSA 521(a):

(1) FAA 621(a) provides, as did MSA subsection 521(a), for the delegation of authorities to perform functions under the FAA by the head of agency or officer through whom the President chooses to exercise functions under FAA. It further provides, however, that such head of agency or officer may specifically provide that authorities delegated may be successively redelegated to any of his subordinates. This change was made to clarify the authority that had been read into the MSA language.

(2) FAA 621(a) further contains new language that in "providing technical assistance under this Act in the field of education, health, housing, or agriculture, or in other fields, the head of agency or officer shall utilize to the fullest extent practicable, the facilities and resources of the Federal agency or agencies with

Next page is Sec. 621  
(2)

118

11/15/61

Sec. 621  
(2)

primary responsibility for domestic programs in such fields." This direction is intended to be followed to the "fullest extent practicable" and, in the language of the H. Conf. Comm. it is intended to: "prevent duplication by the AID agency of facilities already in existence under other U. S. departments or agencies." (H. Conf. Comm. Rep. p. 62). The Executive Branch has informed Congress that it understands that this provision does not alter the existing basic relationships between the aid agency and domestic agencies since AID cannot share responsibility for the country aid programs.

Cross Reference: See FAA Sec. 632(b) pursuant to which AID will enter into interagency agreements.

FAA Sec. 621(b) is new. It is a technical provision which continues ICA, DLF and IGC in existence for up to 60 days after the effective date of the FAA. It is best explained in the language of the SCFR:

"This provision is necessary because section 642(a)(2) of the bill...repeals most of the Mutual Security Act of 1954, including the portions creating these agencies... and they would therefore automatically cease to exist on the effective date of the bill unless provision were made to the contrary. Their continuance for a maximum period of 60 days will give the President opportunity to issue the necessary Executive Orders creating the new agency and to provide for an orderly transfer of functions, personnel, records, and property." (SCFR Rep. p. 36).

The FAA was approved by the President on September 4, 1961. Accordingly, unless sooner abolished by the President, the respective functions, offices, personnel, property, records, funds, and assets which were available to ICA, DLF, and IGC will remain available until November 3, 1961.

FAA Sec. 621(c) is new. It is a technical provision which directs the President to designate, on the date of the abolition of DLF (which will be November 3, 1961, or sooner if the President so directs), the head of the agency or the officer administering Part I, Secs. 101-461, as the transferee of the operations of the DLF and as the officer to be sued. The final clause is necessary because DLF has been a corporation and has been suable as a corporation. On the demise of a corporation it is necessary to name a successor for the purpose of suits against the former corporation.

The section directs the President to transfer such offices, entities, functions, property, and records of the Fund as may be necessary leaving the determination of necessity to the President.

Next page is Sec. 621  
(3)

113

The section further provides that the President shall, notwithstanding any other provision of law, transfer to AID only such personnel of the Fund as the President determines to be necessary. The determination of the necessity of any employee is left to the President and although the authority is unlimited by any law, regulation, or express number of personnel, the H. Conf. Comm. indicated that no "wholesale replacement of personnel" was contemplated (H. Conf. Comm. Rep. p. 63).

FAA Sec. 621(d) is new. It directs the President to designate the head of agency or the officer administering AID as the transferee of the functions, etc. of ICA. It is similar to FAA Sec. 621(c) except, that those provisions of Sec. 621 (c) expressly designed to deal with DLF as a corporate entity are unnecessary and accordingly are not included with respect to ICA. A similar direction to transfer only such personnel as are determined to be necessary is included, and the H. Conf. Comm. reiterates that no "wholesale replacement of personnel" is required (H. Conf. Comm. Rep. p. 63).

FAA Sec. 621(e) is new. Section 104(e) of P.L. 480 (the so-called Cooley Amendment) provides that not more than 25 percent of foreign currencies received in sales of surplus agricultural commodities may be used for loans through the Export-Import Bank to private business (principally American) abroad. FAA Sec. 704 amends Section 104(e) of P.L. 480 to provide that such loans will be made by "such agency as the President shall direct" instead of by the ExIm Bank. FAA Sec. 621(e) enables the President to divest the ExIm Bank of the task of administering Cooley Amendment loans which have been made or which will be made. It is expected that this function will be transferred to AID.

The Export-Import Bank is a corporation. Accordingly, FAA Sec. 621(e) further directs the President to designate the transferee of the Cooley Amendment functions as the successor to the Bank for purposes of suit arising out of the Cooley Amendment loans.

10/17/61

Sec. 622

(1)

Section 622. COORDINATION WITH FOREIGN POLICY.

This Section is substantially identical to MSA Sec. 523(a), (b), and (c).

It is intended to eliminate uncertainty and to clarify lines of authority in the coordination of foreign assistance programs including the military assistance program and to place the responsibility for such coordination in the Secretary of State and, among U. S. representatives in foreign countries, in the Ambassador. The SCFR stated that:

"...under the President, the Secretary of State has responsibility for the continuous supervision and general direction of the assistance programs and ...ambassadors abroad are responsible for coordination of aid activities in the countries to which they are assigned. The Secretary of State is also clearly given the responsibility for determining whether there shall be a military assistance program for a country and the value thereof." (SCFR Rep. p. 37).

The Secretary of State is given clear authority to determine whether there shall be a military assistance program and how large it shall be.

Next page is Sec. 623

(1)

115

10/17/61

Sec. 623  
(1)

Section 623. THE SECRETARY OF DEFENSE.

This Section is substantially identical with MSA Sec. 524. The H. Conf. Comm. Rep. states (at p. 63) that this provision is included to assure

"that there will be no confusion as to the functions and responsibilities of the Secretaries of State and Defense with respect to the administration of the military assistance program."

The SCFR Rep. states (at p. 37) that:

"The Secretary of Defense in Section 623 is given primary responsibility for the content of military assistance programs (once the size of those programs has been determined by the Secretary of State) and for the administration of those programs, including the establishment of priorities in procurement and delivery."

Next page is Sec. 624  
(1)

116

Section 624. STATUTORY OFFICERS.

This Section contains authority to appoint the top administrators and top policy-making officials of AID. It also provides authority necessary to assure an orderly transfer to the new agency. It provides for an "Inspector General, Foreign Assistance" reporting directly to the Secretary of State, his top administrative staff, and prescribes his responsibilities.

There is no comparable provision in MSA although FAA Sec. 624 is derived in part from Reorganization Plan 7 of 1953 and MSA Secs. 205(b), 527(b), and 533A which authorized appointment of top administrative and policy-making officials and created B/IGC.

FAA Sec. 624(a) provides for the appointment by the President by and with the advice and consent of the Senate of twelve top administrators and policy-making officials. Of these twelve, one will have the rank of Under Secretary, two the rank of Deputy Under Secretary, and nine the rank of Assistant Secretary. The President may fix their salaries but they may not exceed the salaries authorized for others of the same rank. In the appointment of one of the nine at Assistant Secretary rank, due consideration shall be given to persons qualified as professional engineers.

FAA Sec. 624(b): Within the limitations established by subsection (a), the President may fix the salaries and titles of the officers appointed pursuant to subsection (a) and, with respect to the eleven ranked as Deputy Under Secretaries or Assistant Secretaries, may prescribe the order of their succession in the event of the absence, death, resignation, or disability of the officers with the rank of Under Secretary or Deputy Under Secretary.

FAA Sec. 624(c): Some officers serving in existing agencies with the confirmation of the Senate will, at the time of the abolition of these agencies, be transferred to comparable jobs in AID. This section relieves such officers from obtaining further Senate confirmation. However, the SCFR stated that it was intended that the provision means

"...that officials presently in office may be transferred laterally but may not be promoted to a rank higher than that now held relative to other positions, without reconfirmation of the Senate."  
(SCFR Rep. p. 37).

FAA Sec. 624(d) is intended to facilitate an orderly transition to AID. It continues until November 3, 1961, all statutory positions authorized pursuant to MSA Secs. 205(b)(DLF), 527(b)(MSA supergrades), Reorganization Plan 7 of 1953, and MSA Sec. 533A(IGC).

10/17/61

Sec. 624  
(2)

FAA Sec. 624(e) establishes an "Inspector General, Foreign Assistance" whose role is similar to but not identical to that of the Inspector General and Comptroller established under the MSA. The differences between the functions of the "Inspector General, Foreign Assistance" and the Inspector General and Comptroller created pursuant to MSA Sec. 533(A) are pointed out below.

FAA Sec. 624(e)(1) provides that, in addition to officers provided for in FAA Sec. 624(a) above, there shall be an "Inspector General, Foreign Assistance" (IGFA) who shall be appointed by the President by and with Senate confirmation and shall receive \$20,000 per year. In addition, a Deputy Inspector General and two Assistants are authorized at salaries of \$19,500 and \$19,000 respectively. The subsection provides for the transfer to the IGFA of such of the property, records, and funds of the office of IGC as the IGFA deems necessary.

The Office of the Inspector General, Foreign Assistance is established with four positions at or above \$19,000 a year, whereas section MSA 533(A) authorized only one \$19,000 a year position for the IGC and authorized one Deputy IGC to be compensated at not to exceed \$18,500.

FAA Sec. 624(e)(2) and (3). The IGFA reports directly to the Secretary of State rather than an undersecretary as under the MSA. The HCFA stated that:

"One of the major problems which has always confronted the Secretary of State in connection with the foreign aid program has been that information as to the shortcomings has not penetrated to him until too late for proper preventive or remedial action." (HCFA Rep. p. 77).

The direct access to the Secretary and the salaries authorized were intended by the House to assure that the observations and recommendations of the Inspector General will not be prevented from reaching the top. (HCFA Rep. p. 77).

FAA Sec. 624(e) further assigns broad responsibility to the IGFA under both the nonmilitary and military assistance provisions of the FAA (AID), the Peace Corps, and P.L. 480.

The IGFA is given the duty of concerning himself with the efficiency and economy of programs, their compliance with laws and regulations, the adequacy of their organization, plans, and procedures, and with the effectiveness of programs in attaining the foreign policy objectives of the United States.

Next page is Sec. 624  
(3)

11/15/61

Sec. 624  
(3)

The language of FAA Sec. 624(e)(2) and (3) extends the scope of the IGFA function from one substantially confined under the language of MSA Sec. 533A to fiscal and management procedures and practices to one which includes a review of policy determinations. Under FAA Sec. 624(e)(3)(c) the IGFA will evaluate programs to determine their effectiveness in attaining United States foreign policy objectives.

FAA Sec. 624(e)(4) and (5) directs the IGFA to use and gives him access to all "records, reports, audits, reviews, documents, papers, recommendations, or other material" of agencies administering functions in his area of responsibility.

FAA Sec. 624(e)(6). The Inspector General is given authority to suspend any part of or all of any project or operation during or after his review. With respect to the scope of the phrase "project or operation" the statute parenthetically excludes country programs from the meaning. The HCFA stated:

"The terms 'project or operation' are not intended to include an entire country program in a country. They apply instead to segments or phases of country programs, including such things as construction projects, award of contracts, the operation of a regional office or the financing of particular types of activity.

"The committee is convinced that an Inspector General, Foreign Assistance, capable of fulfilling the responsibilities assigned to him under this subsection will use his power to suspend infrequently, perhaps not at all." (HCFA Rep. p. 78.)

The intention of the committee was to enable the IGFA to compel attention to his comments when officials refused to take remedial action. This suspension authority is new.

The Secretary of State may overrule the action of the IGFA and, if he sees fit, direct that a suspended project be resumed.

FAA Sec. 624(e)(7) is similar to the provision of MSA Sec. 533A(d). It provides that the expenses of the IGFA shall be charged to the appropriations made to carry out the programs for which the IGFA is responsible. The section provides that the authority to charge appropriations is terminated for failure of the IGFA to furnish documents, etc., requested by the GAO or appropriate Congressional committees unless the President personally certifies that he has forbidden the furnishing thereof and his reason for so doing.

Next page is Sec. 624  
(4)

119

11/15/61

Sec. 624  
(4)

The section limits the Inspector General, Foreign Assistance budget to \$2 million. The section provides for the Inspector General confidential funds not to exceed \$2,000 a year when determined by him to be in aid of inspections, audits, or reviews he is conducting.

Cross Reference: See FAA Approp. Act 1962 Sec. 602 for a similar provision on the termination of the availability of appropriations.

Next page is Sec. 625  
(1)

120

Section 625. EMPLOYMENT OF PERSONNEL

FAA Sec. 625(a) is substantially identical to section 527(a) of the Mutual Security Act and authorizes the employment of necessary personnel to carry out the functions of AID.

FAA Sec. 625(b) is based on MSA Sec. 527(b). It changes the numbers of persons who may be compensated, appointed or removed without regard to the Classification Act of 1949 up to certain specified dollar limits and makes two other changes.

(1) Under MSA 527(b) persons could only be compensated without regard to the Classification Act of 1949. Under FAA persons may be compensated, appointed or removed without regard to the provisions of any law.

(2) The section permits the President to make regulations to afford persons appointed under FAA Sec. 625(b) to reemployment rights to the position or a similar position to that which they occupied at the time of their appointment. This authority will enable employees of government agencies to accept these top level jobs without sacrificing their long-run position with their parent agency.

FAA Sec. 625(c) is derived from MSA Sec. 527(b). It authorizes supergrade positions for the functions under FAA Part II (military assistance).

FAA Sec. 625(d)(1) is substantially similar to MSA Sec. 527(c)(1). It authorizes the employment or assignment of personnel to perform functions under the FAA outside the United States by any agency of the U. S. Government and the compensation of such personnel at any of the rates provided for in the Foreign Service Act. It further grants such persons reemployment rights unless the President by regulation provides otherwise in cases in which employment or assignment exceeds thirty months and provides that, except for policy-making officials who may be subject to a political test, no political, racial, color, or religious test shall be applied. See also FA Appropriation Act 1962 Sec. 108 for a provision applicable to discrimination by foreign nations.

FAA Sec. 625(d)(2) is substantially identical to MSA Sec. 527(c)(2). It authorizes the President to utilize such authorities contained in the Foreign Service Act as he deems necessary to carry out the program. Reemployment rights are assured employees appointed or assigned pursuant to FAA Sec. 625(d)(2) except that the President may make exceptions when such appointment or assignment exceeds thirty months. It provides that Foreign Service officers appointed or assigned under FAA Sec. 625(d)(2) will receive in class promotions in accordance with such regulations as the President shall prescribe.

Next page is Sec. 625  
(2)

121

FAA Sec. 625(e) is new and establishes a selection out system for certain aid personnel. It is similar to authority applicable to Foreign Service officers contained in the Foreign Service Act.

The section authorizes the President to establish standards or other criteria for maintaining adequate performance levels for personnel appointed under MSA Sec. 527(c)(2) or FAA Sec. 625(d)(2). Persons who fail to meet prescribed standards may be selected out of the service notwithstanding any other law but subject to an administrative appeal. Employees selected out under this section may, if regulations so provide, receive severance benefits equal to one month's salary for each year's service up to a total of one year's salary at his then current salary rate.

FAA Sec. 625(f) is new. It is intended to make it clear that it is possible to obligate funds for the duration of a project agreement with a foreign government for personal services of U. S. Government employees as well as for services of other personnel such as contract employees, and other supplies and services needed to perform the agreement. In the past aid operations have been restricted by indications of the Comptroller General that funds for personal services of U. S. Government employees should be obligated only on a month-to-month basis. Now Part III.A.2 and Part III.D ICA M. O. 712.3 and the application of ICA M. O. 712.4 are substantially out of date.

FAA Sec. 625(g). There was no provision comparable to this in the MSA. Sec. 578 of the Foreign Service Act requires the Secretary to designate every FSO position which requires foreign language competence and provides that after December 31, 1963 each designated position shall be filled only by an incumbent having such competence.

The language of this subsection requires the principles of section 528 to be applicable to AID personnel. The SCFR which introduced the subsection, indicated, in the language quoted below, that it is very concerned with the language problem:

"The committee is tired of hearing of aid program personnel who may be technically qualified but who are unwilling to make the effort necessary to be able to communicate with the people they are supposed to be trying to help." (SCFR Rep. p. 39)

The Conf. Comm. made it very clear that the Congress understood that special problems exist in the recruitment of AID personnel which do not exist with respect to Foreign Service personnel and stated that AID was subject to the principle but not the letter of Sec. 578 of the Foreign Service Act. The H. Conf. Comm. Rep. states (at p. 66):

Next page is Sec. 625  
(3)

"The committee of conference understands that this requirement is intended to apply only to the principles of section 578 of the Foreign Service Act since special problems exist in the recruitment and assignment of AID agency technicians which do not pertain to Foreign Service officers of the Department of State. The committee of conference expects that the Secretary of State will establish appropriate standards of language competence for AID agency personnel which will be both adequate and realistic."

FAA Sec. 625(h) is substantially similar to MSA Sec. 527(e). It prohibits the receipt by officers and employees of the U. S. Government performing AID functions of any compensation or other benefits from any foreign country. If situations arise in which compensation or other benefits should be received from foreign countries, FAA Sec. 625(h) authorizes the President to arrange for reimbursement to or other sharing of costs with the U. S. Government. It is possible, for example, to channel payments from a foreign government to U. S. employees through an AID mission trust account.

FAA Sec. 625(i). There is no provision comparable to this in the MSA. It is intended to express the intention of Congress that in assigning personnel overseas, consideration be given to qualifications, in addition to technical qualifications, such as language competence or prior experience in a particular country or area.

Section 626. EXPERTS, CONSULTANTS, AND RETIRED OFFICERS.

FAA Sec. 626(a). This subsection is similar to MSA Secs. 530(a) and 532(a). It authorizes the employment of individual experts or consultants in accordance with section 15 of the Administrative Expenses Act of 1946. It permits them to be compensated up to \$75 a day and to receive travel expenses and per diem at a rate provided in the Standardized Government Travel Regulations. The subsection also authorizes the employment of organizations of experts and consultants.

Employment under FAA Sec. 626(a), whether by contract or direct hire, may be renewed annually, but such annual renewals are limited to the following numbers of employment relationships:

1. Ten people as experts or consultants;
2. Contracts with ten retired military officers with research and development experience;
3. Contracts with five retired military officers with specialized experience of a broad politico-military nature; and
4. An unlimited number of contracts with organizations of experts or consultants.

FAA Sec. 626(b) is substantially similar to the first sentence of MSA Sec. 532(a). It exempts experts and consultants under FAA Sec. 626(a) from certain conflict of interest laws except to the extent that such laws prohibit an individual from receiving compensation in respect of any matter in which he was directly involved in government service. The subsection further provides that service as an expert or consultant is not to be considered employment for purposes of limiting reemployment of retired employees or governing simultaneous receipt of compensation and retired pay or annuities.

FAA Sec. 626(c) is substantially similar to MSA Sec 532(b). It permits the employment of retired officers but does not exempt them from laws prohibiting simultaneous receipt of salaries and retirement pay.

FAA Sec. 626(d) is identical to MSA Sec. 530(b). It authorizes the employment of persons of outstanding experience and ability without compensation in accordance with the applicable provisions of the Defense Production Act of 1950. (50 U.S.C. App. 2160(b)) and regulation issued thereunder.

Next page is Sec. 627-630  
(1)

INTRODUCTION

FAA Secs. 627-630 are substantially similar to MSA 528 and 529. They continue authority to detail or assign officers or employees to foreign governments or international organizations and provide certain conditions thereon as follows:

Section 627. DETAIL OF PERSONNEL TO FOREIGN GOVERNMENTS.

This section is substantially similar to MSA Sec. 528(a) It provides that when in furtherance of the purposes of the FAA officers or employees may be detailed or assigned to foreign governments where acceptance of the office involves no oath to or compensation or other benefits from any foreign government. See FAA Sec. 625(h) also.

Section 628. DETAIL OF PERSONNEL TO INTERNATIONAL ORGANIZATIONS.

This section is substantially similar to MSA Sec. 529(a) It provides that when consistent with and in furtherance of the purposes of FAA an officer or employee may be detailed, assigned, or otherwise made available to international organizations.

Section 629. STATUS OF PERSONNEL DETAILED.

FAA Sec. 629(a) is substantially similar to sections MSA Secs. 528(b) and 529(b). It provides that persons assigned pursuant to FAA Secs. 627 or 628 shall be considered as employees of the government agencies from which assigned and that they shall continue to receive compensation, allowances, and benefits from such agency funds.

FAA Sec. 629(b) is substantially similar to MSA Sec. 529(b) which authorized representation allowances only for employees detailed to international organizations. FAA Sec. 629(b) on the other hand authorizes representation allowances for employees detailed or assigned under FAA Sec. 627 (to foreign governments), FAA Sec. 628 (to international organizations), appointed under FAA Sec. 631 (for special missions or staffs abroad), and for the Inspector General, Foreign Assistance.

Section 630. TERMS OF DETAIL OR ASSIGNMENT.

This subsection is substantially similar to MSA Sec. 529(c). It provides for details or assignments to be made under FAA Sec. 627 or 628 or MSA Sec. 408 (NATO) on any of the following terms:

- (a) Without reimbursement to the U. S. Government;
- (b) With reimbursement in whole or in part to be credited to the appropriation from which the reimbursable payments were made;

10/17/61

Sec. 627-630  
(2)

- (c) With reimbursement in the form of an advance by the organization or government of funds, property, or services available for specified uses in furtherance of the AID program. Funds so advanced may be established as a separate fund in the Treasury.
- (d) Subject to receipt by the U. S. of a credit to be applied against its share of the expenses of the organization.

Next page is Sec. 631  
(1)

126

10/17/61

Sec. 631  
(1)

Section 631. MISSIONS AND STAFFS ABROAD.

This section is substantially similar to MSA Sec. 526. It provides for the maintenance of special missions or staffs outside the United States for carrying out the functions of the FAA. It further provides for the appointment and notwithstanding any other law the removal of the chiefs and deputy chiefs of such missions. The section also provides for rates of compensation for the chiefs of such missions.

Cross Reference: FAA Sec. 641 refers to the identification of aid programs overseas as "American Aid".

Next page is Sec. 632  
(1)

127

10/17/61

Sec. 632  
(1)

Section 632. ALLOCATION AND REIMBURSEMENT AMONG AGENCIES

FAA Sec. 632 contains provisions analagous to those in MSA Secs. 505 and 522 regarding what are essentially bookkeeping transactions among government agencies.

FAA Sec. 632(a) is substantially identical to MSA Sec. 522(a) It permits the President to allocate any FAA funds (including advances from foreign governments and international organizations) to any U. S. Government agency and provides that such funds may be obligated and expended for the purposes for which authorized by such agency under its own regular authority or under the authority contained in the FAA. This complements the authority given the President in FAA Sec. 621(a) to exercise any of his functions under the FAA through any government agency.

FAA Sec. 632(b) is the same as MSA Sec. 522(b) except that a provision regarding surcharges by the General Services Administration has been omitted. It permits any officer carrying out functions under the FAA to utilize services and facilities of, or procure commodities or defense articles from, any U. S. Government agency either with the consent of the head of such agency or by direction of the President. It also provides that funds allocated pursuant to this subsection may be established in separate appropriation accounts on the books of the Treasury. This section does not apply to situations in which AID is performing services for other government agencies at the expense of that agency's appropriation. Such transactions must be based upon the provisions of the Economy Act (31 U.S.C. 686).

A series of agreements with the heads of U. S. Government Departments may be found in ICA M. O. 250.2 - 251.9 which are deemed to constitute the consent of the head of the agency required by Sec. 632(b). They in turn authorize the entering into of working level agreements (heretofore known as "Participating Agency Service Agreements") pursuant to which AID arranges for particular transactions with other government agencies. See FAA Sec. 621 which encourages the use of such agencies.

FAA Sec. 632(c) is the same as MSA Sec. 522(d). It sets forth the manner in which reimbursement or payment when required is made to another agency furnishing facilities, services, or commodities for nonmilitary assistance under FAA Part I. Reimbursement, when required, is to be made from economic assistance funds. It may be either at replacement cost, at actual cost if required by law, or at any other legal price agreed to by the owning or disposing agency.

Next page is Sec. 632  
(2)

128

FAA Sec. 632(d) is taken from MSA Sec. 522(c). It sets forth the provisions applicable to reimbursement in connection with the military assistance programs. It provides that, except as otherwise provided in FAA Sec. 507 (sales) and FAA Sec. 510 (special authority) when an agency furnishes military assistance it shall be reimbursed from military assistance funds for its expenses and for the "value" of what it furnishes (as defined in FAA Sec. 644(m)). The reimbursement received is to be credited to the current applicable appropriation of such agency.

FAA Sec. 632(e) is substantially identical to MSA Sec. 522(e). It authorizes the basic procedure generally used for financing procurement of commodities, defense articles, and services (including defense services) through commercial channels. Subject to terms and conditions approved by the Secretary of the Treasury, bank accounts may be established against which letters of commitment may be issued and from which withdrawals may be made by recipient countries upon presentation of appropriate documentation. Funds thus expended are to be accounted for on standard documentation required for government expenditures. The Comptroller General is authorized to approve other regulations for accounting for funds spent in offshore procurement. (See ICA Regulation 1, Sec. 201.18 for rules pertaining to documentation required for reimbursement.)

FAA Sec. 632(f) is substantially identical to the second sentence of MSA Sec. 505(b). Credits made by the Export-Import Bank of Washington with funds allocated to it under FAA Sec. 632(a) or MSA Sec. 522(a) are not to be considered within the financing limitations of section 7 of the Export-Import Bank Act of 1945.

FAA Sec. 632(g) is derived in part from MSA Sec. 522(f). It permits an initial charging of expense against any appropriation under the FAA within the limits of available funds so long as the expense is finally charged to the applicable appropriation with a credit to the appropriation initially charged, by the termination of the same fiscal year. However, a second proviso which is new, relieves AID from such a year-end allocation in instances in which such an allocation of charges for expenses (other than those provided for administrative expenses in FAA Sec. 637) incurred in furnishing assistance would result in an accounting expense disproportionate to the advantage of the allocation. For example, it might be too unwieldy to require a technician who provides services mainly in connection with development grant projects to keep a record of the time he may spend giving advice in connection with supporting assistance projects so that his salary and expenses can be allocated to both of these categories. (HCFA Rep. p. 83).

11/15/61

Sec. 633  
(1)

Section 633. WAIVERS OF CERTAIN LAWS.

FAA Sec. 633 brings together waivers of law formerly contained in MSA Secs. 533 and 107. This section was intended to permit waiver of laws which were passed to meet situations "which are not applicable to the foreign assistance program" (SCFR Rep. p. 43).

FAA Sec. 633(a) permits the performance of functions under the military and non military assistance provisions of the FAA without regard to such provisions of law (other than the Renegotiation Act of 1951, which, however, is not applicable generally to economic assistance) relating to U. S. Government contracting and the expenditure of U. S. Government funds as the President may specify, whenever he determines it to be in furtherance of the FAA. The Presidential specification of laws pursuant to this section is contained in Executive Order 10784 (23 F.R. 7691, as amended by Executive Order 10845, 24 F.R. 8317). (See Legislation on Foreign Relations, December 1960, pp. 142-143.) (See Sec. 602(d)(2) of the Federal Property and Administrative Services Act of 1949, as amended, for an exemption from the provisions of that Act for "foreign aid" (40 U.S.C. 474).)

FAA Sec. 633(b) authorizes a waiver of such provisions as the President may specify of the Neutrality Act of 1939.

FAA Sec. 633(c) authorizes the assignment of Defense Department personnel to any civil office to carry out the Act, notwithstanding statutory provisions to the contrary.

Next page is Sec. 634  
(1)

130

10/17/61

Sec. 634  
(1)

Section 634. REPORTS AND INFORMATION.

FAA Sec. 634(a) requires the President to report to the Congress, after the close of each fiscal year, on operations during that fiscal year under the FAA. These reports are to include information on the operation of the investment guaranty program. (See FAA Secs. 221-224). The import of this section, as qualified by the first sentence of FAA Sec. 634(b) is substantially the same as that of MSA Sec. 534(a) except that (1) the new section makes clear that these reports are to be submitted once each year, and (2) only information concerning the investment guaranty program is singled out as necessarily to be included in the annual report. It is not believed that the failure to specify other operations under the FAA relieves the Executive of the duty of making full reports.

FAA Sec. 634(b) requires the President, both in the reports required by FAA Sec. 634(a) and in response to requests from members of the Congress on inquiries from the public to make available all information concerning operations under the FAA not deemed by him to be incompatible with the security of the United States.

The first sentence of this section is substantially similar to MSA Sec. 550. The Executive Branch has informed the Congress that it would not construe this provision as being intended to infringe on the historical right of the President to withhold information, the disclosure of which is deemed incompatible with the public interest because to do otherwise would clearly raise serious constitutional questions.

The second sentence of this section requires the President to make public certain appropriate information concerning each development loan made under FAA Sec. 201(a) from the Development Loan Fund. It is new and replaces the more generalized reporting requirement contained in the last sentence of MSA Sec. 202(b). The H. Conf. Comm. Rep. (at page 67) makes clear that reports of development loans are not required to include information furnished in confidence or information the publication of which would not be in the best interests of the United States.

FAA Sec. 634(c) provides for a cut-off of funding in any country, or with respect to any project or activity if requested documents or other materials, or a Presidential certification forbidding their disclosure and stating the reasons therefor, are not furnished within 35 days of the receipt by the head of any agency carrying out any provision of the FAA of a written request for such documents or materials from the GAO or any committee of Congress charged with considering legislation, appropriations or expenditures under the FAA.

Next page is Sec. 634  
(2)

131

10/17/61

Sec. 634  
(2)

This is quite similar to Sec. 101(d) of the Mutual Security Appropriation Act of 1961 with, however, two significant differences:

- (1) This section applies to both nonmilitary and military assistance (H. Conf. Comm. Rep. p. 67); and
- (2) This section no longer enables Congressional subcommittees, as such, to invoke the sanction of the funding cut-off provided.

Cross Reference: See FAA Sec. 624(e)(7) and FA Approp. Act 1962 Sec. 602 for cut-off provisions related to the Inspector General, Foreign Assistance.

FAA Sec. 634(d) provides that the President, in January of each year, shall notify the Senate Appropriations and Foreign Relations Committees and to the Speaker of the House of all action taken during the previous twelve months which:

- (1) Resulted in furnishing assistance of a kind, for a purpose, or to an area substantially different from the presentation made to the Congress during its consideration of the FAA or any act appropriating funds pursuant to an authorization contained in the FAA; or
- (2) Resulted in obligations or reservations 50% or more greater than the proposed figures shown in any such presentation. The report is required to state the justification for any such changes.

In addition, this section requires prompt notification to the same recipients of any determinations made under:

- (a) FAA Sec. 303 - Waiver of 50-50 shipping requirement with respect to Indus Basin.
- (b) FAA Sec. 610 - Transfer between accounts;
- (c) FAA Sec. 614(a) - Presidents Special Authority; or
- (d) FAA Sec. 614(b) - Use of Supporting Assistance Funds to meet U. S. objectives or responsibilities in Germany.

This section is based upon MSA Sec. 513. It differs from section 513, however, in the timing of the reports on program changes, the recipients of such reports (though not their content), and in the identity of various determinations which must be reported.

Next page is Sec. 634  
(3)

132

10/17/61

Sec. 634  
(3)

FAA Sec. 634(e) provides that the President shall include in his recommendations to the Congress for programs under the FAA for each fiscal year (presumably the annual presentation) a specific plan, with respect to each country receiving it, for the progressive reduction and eventual termination of grant economic assistance wherever such reduction or termination is practicable.

This section places on a permanent basis the so-called Mansfield Amendment, which, as MSA Sec. 503(c) related only to the FY 1961 presentation.

Next page is Sec. 635  
(1)

133

10/17/61

Sec. 635  
(1)

Section 635. GENERAL AUTHORITIES.

FAA Sec. 635(a) is based upon the first sentence of MSA Sec. 505(a). It provides that, except as otherwise specified in the FAA, assistance may be furnished on any terms thought to be best suited to accomplishing the purposes of the program but that loans shall be emphasized rather than grants wherever possible. In addition to grants and credit arrangements, it also includes payment in foreign currency or in kind. The broad authority of this subsection does not extend to development loans which are specifically required by FAA Sec. 201 to be repayable in dollars. The section does provide maximum flexibility, however, for development grants, investment surveys, contributions to international organizations, supporting assistance and military assistance.

FAA Sec. 635(b) is derived from MSA Sec. 205(c), the first and second sentences of MSA Sec. 307(a), and MSA Sec. 535(a). It authorizes the President, except as otherwise specifically provided in the FAA, to make advances and grants to, and make and perform agreements and contracts and enter into other transactions with, any person or body of persons, or any governmental or international body in furtherance of the purposes of the act and "within the limitations of the Act."

FAA Sec. 635(c) is new. It states the sense of Congress that, in furthering the purposes of this Act, the President shall use to the maximum extent practicable voluntary, non-profit organizations registered with, and approved by, the Advisory Committee on Voluntary Foreign Aid.

FAA Sec. 635(d) is derived from MSA Sec. 205(c). It authorizes the President to accept and use any kind of property or services donated for use for furtherance of the FAA. MSA Sec. 205(c), however, limited the use of such donations to the Development Loan Fund only. It will henceforth be an exception to the provision of 31 U.S.C. 665 which prohibits the acceptance by the U. S. Government of voluntary services.

FAA Sec. 635(e) is similar to MSA Sec. 537(b). It authorizes any U. S. Government agency (not just AID) to pay the cost of health and accident insurance for foreign participants in any program of furnishing technical information while such participants are absent from their homes for such programs.

Next page is Sec. 635  
(2)

134

11/15/61

Sec. 635  
(2)

FAA Sec. 635(f) is new. It provides specific authority for the admission of foreign participants to the United States as non-immigrants under the Immigration and Nationality Act under conditions to be prescribed by the Secretary of State and the Attorney General. Similar authority, which is, however, subject to certain specific restrictions, now exists under the Mutual Educational and Cultural Exchange Act, which probably supersedes Sec. 635(f).

FAA Sec. 635(g) is derived in part from MSA Sec. 205(c) and provides authorities in connection with the making of loans generally similar to those now in DLF. It is divided into six subsections. Subsections (1) through (4) authorize the President, in making FAA loans, to exercise powers and authority of the type normally made available for business-type operations conducted by corporate or other agencies of the U. S. Government. E. g., subsection (3) authorizes the acquisition and disposal of property in connection with loans with an exception for direct acquisition of equity securities. Subsection (4) is significant in that it continues the authority previously held by the DLF to determine the character of its obligations and extends such authority to all loans under the FAA. Subsection (5) is similar to MSA Sec. 204(c) and applies to lending functions the auditing procedures applied to U. S. Government corporations by the Government Corporation Control Act.

FAA Sec. 635(h) is derived in part from the final sentence of MSA Sec. 307(a). It provides that a contract or agreement involving the expenditure of funds made available under title II (development grant) and title V (development research) of Chapter 2 of Part I and under military assistance provisions of Part II, may be, subject to any future action of Congress, extended at any time for not more than five years. MSA Sec. 307(a) was limited to three years and applied only to technical assistance funds.

FAA Sec. 635(i) is new. It provides that claims arising as a result of operations under the investment guaranty operations (FAA Secs. 221-224) may be settled, and disputes arising as a result of such operations may be arbitrated, on terms or conditions determined by the President.

FAA Sec. 635(j) is substantially the same as MSA Sec. 202(b). It exempts private businessmen participating in operations or transactions under the FAA from the legal prohibition (18 U.S.C. 955) on private loans to a foreign government or governmental unit which is in default in the payment upon its obligations to the United States Government. Without this exemption, private businessmen would be prohibited from participating in the program in some countries, despite the emphasis which the FAA puts on private participation (see FAA Sec. 601).

Next page is Sec. 636(a)  
(1)

135

10/17/61

Sec. 636(a)  
(1)

Section 636. PROVISIONS ON THE USES OF FUNDS.

The purpose of this section is to provide basic legislative authority of an administrative nature for particular purposes which are considered necessary and important in carrying out the purposes of the FAA. While, as a general matter, funds may be used for any necessary expenses of carrying out the programs for which the funds are made available, several of the provisions in this section are included because of special statutes or Comptroller General rulings which require, or may require, express statutory authorizations to use funds for these particular types of expenses. The provisions in subsection (a) apply to appropriations for the purposes of or pursuant to the FAA (except military assistance under Part II), to funds allocated to any United States Government agency from any other appropriations for functions directly related to the purposes of the FAA, and to funds made available for other purposes to the agency primarily responsible for administering Part I. The provisions in this section were taken for the most part from MSA Sec. 537(a).

FAA Sec. 636(a) is derived from MSA Sec. 537(a).

FAA Sec. 636(a)(1). This paragraph is based on language contained in MSA Sec. 537(a)(1). It permits funds to be used for payment of rents in the United States including the District of Columbia, without regard to the prohibitions contained in 40 U.S.C. Secs. 34 and 304c. It also permits the repair, alteration, and improvement of such leased properties without regard to the limitation contained in 40 U.S.C. Sec. 278a which sets a limitation on the value of improvements, alterations and repair to such premises. Authority to pay rent for space in buildings outside the District of Columbia would permit the agency to acquire needed warehouse or storage space to facilitate the advance procurement of supplies, such as excess property, for use in the program. (See FAA Sec. 608).

FAA Sec. 636(a)(2) is derived from language in MSA Sec. 537(a)(2). It permits funds to be used for attendance at meetings despite the prohibitions contained in 31 U.S.C. Sec. 551 and 5 U.S.C. Sec. 83, and further authorizes payment of incidental expenses related to arrangements for meetings of groups of consultants in connection with performance of functions authorized by the FAA.

FAA Sec. 636(a)(3) is substantially identical to language in MSA Sec. 537(a)(3). It authorizes the employment by contract of individuals (whether Americans or foreign nationals) for personal services abroad. The proviso ensures that persons serving under contract pursuant to the provisions of this paragraph are not considered employees of the United States Government for the purpose of any law administered by the Civil Service Commission. The contractual services involved range from professional technical advice to foreign governments to custodial and housekeeping services for AID Missions.

next page is Sec. 636(a)  
(2)

136

10/17/61

Sec. 636(a)  
(2)

FAA Sec. 636(a)(4) is substantially identical to language in MSA Sec. 537(a)(4). It authorizes the purchase, maintenance, operation, and hire of aircraft except that aircraft for administrative purposes may be purchased only as specifically provided for in appropriation or other act. It is included in view of 5 U.S.C. Sec. 78(b) which would, in the absence of this express authorization, prohibit the purchase, maintenance, or operation of any aircraft. 5 U.S.C. Sec. 78(b) specifies that purchases of aircraft with funds for administrative expenses may be made only as expressly provided in an appropriation or other act.

FAA Sec. 636(a)(5) is derived from language in MSA Sec. 537(a)(5). It contains the express authorization which is required by 5 U.S.C. Sec. 78(a) for the purchase or hire of passenger motor vehicles for use by a United States Government Agency. It specifies that, except as may otherwise be provided in an appropriation or other act, passenger motor vehicles for use outside the U.S. may be purchased by a U.S. Government agency for administration purposes on a replacement basis only. The language makes it clear that program purchases for use as part of the aid being delivered to a foreign country are not limited by the restrictive language of the paragraph.

The proviso, which specifies that passenger motor vehicles for use in the United States may be purchased only as may subsequently be expressly provided in an appropriation or other act, contains new language which provides authorization to purchase a vehicle for the use of the head of the agency primarily responsible for administering the act, and, in addition, provides that such purchase shall be without regard to the limitation as to price contained in 5 U.S.C. Sec. 78(a)(1) or the limitation as to use set forth in 5 U.S.C. Sec. 78(c)(2). The language also permits the AID to pay not to exceed \$3500 for vehicles for Chiefs of Missions.

The FA Appropriation Act 1962 appropriated \$47,500,000 for expenses authorized by FAA Sec. 637(a) "including the purchase of not to exceed twenty-five passenger motor vehicles for use outside the United States."

FAA Sec. 636(a)(6) is derived from language contained in MSA Sec. 537(a)(6). It is included in view of Comptroller General rulings that express authorization is required to pay expenses which are classified as entertainment. The language eliminates the geographic restriction contained in MSA Sec. 537(a)(6) which provided authority to pay entertainment expenses only in the United States. Not to exceed \$25,000 may be used for such expenses in any fiscal year except as may subsequently be expressly provided in an appropriation or other act. MSA Sec. 537(a)(6) limited the amount to \$15,000. Expenses contemplated under this paragraph would include expenses incurred by high-ranking U.S. officials responsible for administration of this program and expenses in connection with foreign nationals participating in activities under the Act in the United States, insofar as such expenditures are classified as entertainment. These expenses are in addition to representation expenses authorized under FAA Secs. 625(d)(2), 629(b), and 631(b).

next page is Sec. 636(a)

(3)  
137

FAA Sec. 636(a)(7) is identical to language contained in MSA Sec. 537(a)(7). It provides authority to exchange dollars for foreign currencies in connection with the carrying out of programs in foreign countries, and to protect personnel from losses which may result from fluctuations in exchange rates.

FAA Sec. 636(a)(8) is substantially identical to language contained in MSA Sec. 537(a)(8). It authorizes payment of expenses (not to exceed \$50,000 in any fiscal year except as may otherwise be provided in an appropriation or other act) of a confidential character upon certification by the head of the agency primarily responsible for administering the FAA, or his designee, that it is considered inadvisable to specify the nature of the expenditure. This is in addition to the authority of the President contained in FAA Sec. 614(c) to certify, within specified limits, the expenditures of amounts without specifying the nature of the expenditures.

FAA Sec. 636(a)(9) is derived from language contained in MSA Sec. 537(a)(9). It provides basic authority to obtain insurance on official motor vehicles and aircraft acquired whether by purchase, lease, hire, or otherwise for use in connection with the AID program outside the United States. The authority to obtain insurance for aircraft is new. It is intended that appropriate insurance will be obtained in countries where required by law and also in countries where the policy of the foreign office or the interest of the United States makes it important to procure such insurance.

FAA Sec. 636(a)(10) is derived from MSA Sec. 537(a)(10). It provides basic authority to rent or lease outside the United States for periods not to exceed ten years offices, buildings, grounds, and quarters, including living quarters to house personnel, and to make advance payments for such purposes. In addition it provides authority to procure furnishings for such living quarters, offices, etc., and to maintain, make necessary repairs, alterations and improvements to properties owned or leased by the U. S. or made available for use to the U.S. in connection with programs under the FAA and additionally, to pay the costs of fuel, water and utilities for such properties.

The ten-year leasing authority is new as is authority to make advance payments. Experience has demonstrated that it is the custom in many countries to require long-range leases and also that rental payments be made in advance. The language contemplating buildings other than those owned or rented by the U. S. is also new and would include, for example, buildings made available by the host country.

FAA Sec. 636(a)(11) is derived from language contained in MSA Sec. 537(a)(11). It authorizes payment of costs of preparing and transporting to their former homes or, with respect to foreign participants engaged in programs under Part I of the FAA, to their former homes or to a place of burial, and care and disposition of, the remains of persons or of members of their families while such persons are away from their homes, engaged in

next page is Sec. 636(a)  
(4)

AID programs. This permits, for example, the payment of funeral and related expenses in cases where circumstances do not permit the return to their homes for burial of persons or of members of their families who die while such persons are away from their homes, engaged in activities authorized by Part I of the FAA.

FAA Sec. 636(a)(12) is identical to language contained in MSA Sec. 537(a)(12). It provides express statutory authorization for the purchase of uniforms for civilian employees and thereby avoids the limitation of \$100 prescribed by the Federal Employees Uniform Allowance Act of September 1, 1954, and is generally used only where local custom requires them for such positions as chauffeurs, messengers, nurses, elevator operators, doormen, etc.

FAA Sec. 636(a)(13) is substantially similar to language contained in MSA Sec. 537(a)(13). It authorizes the establishment of per diem rates for foreign participants engaged in program activities under Part I of the FAA while such persons are undergoing training away from their homes in countries other than the United States.

FAA Sec. 636(a)(14) is similar to language contained in MSA Sec. 537(a)(14). It makes clear that funds may be used in accordance with the authorities of the Foreign Service Act, not otherwise provided for.

FAA Sec. 636(a)(15) is substantially similar to language contained in MSA Sec. 537(a)(15). It authorizes purchase of ice and drinking water for use outside the U.S. It is included because of Comptroller General rulings which require express authorization to pay for ice and drinking water.

FAA Sec. 636(a)(16) is similar to language contained in MSA Sec. 537(a)(16). It is required to permit the Coast and Geodetic Survey to have not to exceed 20 additional commissioned officers for purposes of the foreign aid program. Similar authority for Public Health officers contained in MSA Sec. 537(a)(16) has been deleted since current authority applicable to the Department of Health, Education and Welfare is considered adequate to enable them to appoint commissioned officers for service with this program.

FAA Sec. 636(a)(17) is derived from MSA Sec. 537(a)(17). It provides for payment of travel expenses of employees and their dependents (including expenses during necessary stopovers while engaged in such travel), as well as expenses of transportation of household goods, personal effects, and vehicles, charging all such expenses to the appropriation available during the fiscal year in which any part of the expenses incident to such travel were first incurred regardless of the year in which the balance of the costs were incurred. The provision authorizing transportation of automobiles for storage and payment of storage has been continued from the predecessor section and will be authorized when it is in the public interest (such as in case of evacuation or while in transit to an area where disturbed conditions

10/17/61

Sec. 636(a)  
(5)

prevent onward shipment) or when it is more economical or otherwise in the public interest to authorize storage. The other provisions contained in MSA Sec. 537(a)(17) relating to storage have been deleted as they are now covered in the Overseas Differentials and Allowances Act.

Next page is Sec. 636(b)-(g)  
(1)

140

11/15/61

Sec. 636(b)-(e)  
(1)

FAA Sec. 636(b) is substantially similar to MSA Sec. 411 (d). It permits the use of both economic and military assistance funds for compensation, allowances, and travel of personnel. It permits printing and binding without regard to provisions of any other law. The provision with respect to printing and binding is primarily to permit use of contract printing services rather than the GPO when use of its services is not practical. The subsection further provides for the waiver of such laws and regulations as may be necessary for expenditures outside the United States in connection with the procurement of supplies and services and administration and operating purposes.

FAA Sec. 636(c) is derived from MSA Sec. 537(c). It appropriates no funds, but is a diversionary authority which authorizes the use in each year and notwithstanding any other law, of not to exceed \$3 million of funds other than development lending funds available under the FAA for assistance. It authorizes such use to construct or acquire (which includes long-term leasing) living quarters, office space, necessary supporting facilities (such as warehouses, garages, community facilities for recreation and civic needs), schools (including dormitories and boarding facilities), and hospitals, and to equip, staff, operate, and maintain such schools and hospitals.

The subsection authorizes school and hospital facilities to be provided for the use of other U. S. Government personnel and their dependents in addition to personnel carrying out activities under the Act. It should be noted that no funds are appropriated for this subsection and that AID program funds must be used for such facilities. Accordingly the authority should be used primarily for AID personnel. The subsection contemplates the provision of facilities for other Government personnel where AID already has or is planning such facilities for personnel performing AID functions and can provide such services for other personnel incidental to or by a minor addition to its own needs. The H.Conf. Comm.stated that:

"The specific authority to construct or otherwise acquire schools and hospitals will permit use of AID funds to meet the needs of dependents of U. S. Government personnel in localities where it is necessary for the AID program to acquire or construct such facilities."

(H.Conf.Comm. Rep. p. 71)

While it is not possible to establish a percentage applicable generally, it is clear that facilities should be provided only where and on such scale that the substantial part of those facilities is for the use of personnel carrying out AID activities.

Facilities may be provided contractor personnel only when the contract so provides.

next page is Sec. 636(b)-(g)  
(2)

141

10/17/61

Sec. 636(b)-(g)  
(2)

FAA Sec. 636(d). There is no provision comparable to this subsection in MSA. It appropriates no funds but is a diversionary authority which authorizes the use in each year, of not to exceed \$1,500,000 of funds available for assistance under the FAA (except development lending funds) for assistance to schools established or to be established abroad where such assistance is the most economical or otherwise practical way to provide for the education of dependents of AID personnel and other U. S. Government personnel. The authority is to be used in lieu of construction or acquisition, but the expenditures authorized hereunder are in addition to the \$3 million provided in Sec. 636(b). Like the authority contained in Sec. 636(c) this authority is to be used primarily for personnel administering AID functions.

Furthermore, it is contemplated that assistance under this authority may result in savings with respect to education allowances now granted on the basis of inadequate facilities at post.

The HCFA stated:

"This authority will provide some administrative flexibility by permitting assistance to be given to existing schools or to schools being established ... Experience indicates that there are schools located abroad which are willing to admit dependents of personnel administering functions under the bill and of U. S. Government personnel, and which can, with some financial assistance, expand or improve their facilities (such as library facilities, laboratory, physical plant) to meet minimal U. S. educational standards."

(HCFA Rep. p. 88)

FAA Sec. 636(e) is substantially identical to MSA Sec. 537(e). This subsection appropriates no funds but provides that funds available under the FAA, except development lending funds, may be used to pay costs of training U. S. citizen personnel employed or assigned under FAA Sec. 625(d)(2) at any state or local unit of government, any public or private nonprofit institution, trade, labor, agricultural, or scientific association or organization, or commercial firm. The authority provided to the Department of Agriculture under 7 U.S.C. Sec. 1881 et seq. may be used in carrying out this subsection even though no interchange of personnel may be involved and even though training may not take place at an institution specified in that act.

Training provided under this section is not considered employment under 5 U.S.C. Sec. 62 (relating to dual office holding) and payments or contributions in connection with the training as deemed appropriate by the head of the agency authorizing the training may be made to the trainee or the agency. If made to the employee, his salary from the U. S. Government should be reduced by the amount of the payment. If made to the agency, the payment should be credited to the current account of the agency.

next page is Sec. 636(b)-(g)  
(3)

142

10/17/61

Sec. 636(b)-(g)  
(3)

FAA Sec. 636(f) is based on MSA Sec. 537(d). The subsection authorizes the use of funds available under Section 212 (Development Grants) for non-administrative (i.e. program) expenses in carrying out development lending, the disposal of surplus agricultural commodities under P.L. 480, and the Act for Assistance in Latin American Development and Chilean Reconstruction. The authority is designed to provide funds for the services of technical experts and other services or facilities not provided for in FAA Sec. 637 (administrative expenses), which will assist the AID in effectively carrying out functions enumerated.

FAA Sec. 636(g) is based in part on MSA Sec. 103(b) and is in part new. It authorizes the use of funds made available for military assistance for:

- (1) Administrative, extraordinary, and operating expenses. The word extraordinary is new and is intended to provide funds to provide the foreign military trainees who come to the United States a broader exposure to American culture. Funds for such extraordinary purposes are limited to \$300,000 and the SCFR stated that a report is expected on the use of such funds after March 4, 1962 (SCFR Rep. p. 48)
- (2) Actual expenses incurred by military officers assigned as tour directors to provide a broader background for foreign trainees without imposing a hardship on the officers so assigned.
- (3) Maintenance, repair, alteration and furnishing of U.S.-owned facilities for the training of foreign military personnel. It is intended by this section to enable the provision of facilities for an Inter-American Defense College should such an institution materialize.

Next page is Sec. 637  
(1)

143

10/17/61

Sec. 637  
(1)

Section 637. ADMINISTRATIVE EXPENSES

This section is based on MSA Sec. 411(b) and (c).

FAA Sec. 637(a) authorizes the appropriation of not to exceed \$50 million for necessary administrative expenses of AID. The FA Appropriation Act 1962 appropriated \$47,500,000 for FY 1962 for FAA Sec. 637(a) expenses (including 25 automobiles for use outside the U.S.).

FAA Sec. 637(b) authorizes the appropriation of such amounts as may be necessary for administrative expenses of the Department of State. This subsection was necessary to authorize such an appropriation in the Foreign Assistance Appropriation Act because it was not feasible to request appropriations as part of the regular State Department Appropriation Act. The FA Appropriation Act 1962 appropriated \$3,000,000 for FY 1962 for expenses under FAA Sec. 637(b) and under Sec. 305 of the Mutual Defense Assistance Control Act of 1951, as amended (the Battle Act).

next page is Sec. 641  
(1)

144

## CHAPTER 3. MISCELLANEOUS PROVISIONS

Section 641. EFFECTIVE DATE AND IDENTIFICATION OF PROGRAMS.

FAA Sec. 641 states that the FAA shall take effect upon the date of its enactment (September 4, 1961). It is identical to MSA Sec. 541 except that it also provides that programs under the act shall be identified appropriately overseas as "American Aid." The Conf. Comm. understood that military and economic assistance cannot always practicably be identified, but it believed that as a minimum the facilities housing U. S. aid missions can be so marked (H. Conf. Comm. Rep. p. 72).

Section 642. STATUTES REPEALED.

FAA Sec. 642(a) serves the same purpose as MSA Sec. 542. It repeals provisions of nine laws, including various provisions of the Mutual Security Acts of 1955, 1956, 1958, 1959 and 1960 and the Mutual Security Appropriation Act of 1958. The MSA is in general repealed except for the following:

"Sec. 402. Earmarking of Funds. - Of the funds authorized to be made available in the fiscal year 1961 pursuant to this Act (other than funds made available pursuant to title II), not less than \$175,000,000 shall be used to finance the export and sale for foreign currencies or the grant of surplus agricultural commodities or products thereof produced in the United States, in addition to surplus agricultural commodities or products transferred pursuant to the Agricultural Trade Development and Assistance Act of 1954, and in accordance with the standards as to pricing and the use of private trade channels expressed in section 101 of said Act. Foreign currency proceeds accruing from such sales shall be used for the purposes of this Act and with particular emphasis on the purposes of section 104 of the Agricultural Trade Development and Assistance Act of 1954 which are in harmony with the purposes of this Act. Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law, the President may use or enter into agreements with friendly nations or organizations of nations to use for such purposes the foreign currencies which accrue to the United States under this section. Surplus food commodities or products thereof made available for transfer under this Act (or any other Act) as a grant or as a sale for foreign currencies may also be made available to the maximum extent practicable to eligible domestic recipients pursuant to section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431), or to needy persons within the United States pursuant to clause (2) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c).

Next page is 641-647  
(2)

10/17/61

Secs. 641-647  
(2)

Section 416 of the Agricultural Act of 1949, as amended (7 U.S.C. 1431), is amended by inserting "whether in private stocks or" after "commodities" the first time that word appears."

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"Sec. 143. Assistance to Yugoslavia. - In furnishing assistance to Yugoslavia, the President shall continuously assure himself (1) that Yugoslavia continues to maintain its independence, (2) that Yugoslavia is not participating in any policy or program for the Communist conquest of the world, and (3) that the furnishing of such assistance is in the interest of the national security of the United States. The President shall keep the Foreign Relations Committee and the Appropriations Committee of the Senate and the Speaker of the House of Representatives fully and constantly informed of any assistance furnished to Yugoslavia under this Act."

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"Sec. 405. Migrants, Refugees, and Escapees. - (a) The President is hereby authorized to continue membership for the United States on the Intergovernmental Committee for European Migration in accordance with its constitution approved in Venice, Italy, on October 19, 1953. For the purpose of assisting in the movement of migrants, there is hereby authorized to be appropriated such amounts as may be necessary from time to time for the payment by the United States of its contributions to the Committee and all necessary salaries and expenses incident to United States participation in the Committee.

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"(c) There is hereby authorized to be appropriated for the fiscal year 1961 not to exceed \$1,300,000 for contributions to the program of the United Nations High Commissioner for Refugees for assistance to refugees under his mandate.

"(d) There is hereby authorized to be appropriated to the President for the fiscal year 1961 not to exceed \$3,500,000 for continuation of activities, including care, training, and resettlement, which have been undertaken for selected escapees under section 451 of this Act."

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"Sec 408. North Atlantic Treaty Organization. - (a) In order to provide for United States participation in the North Atlantic Treaty Organization, there is hereby authorized to be appropriated such amounts as may be necessary from time to time for the payment by the United States of its share of the expenses of the Organization and all necessary salaries and expenses of the United States permanent representative to the Organization, of such persons as may be appointed to represent the United States in the subsidiary bodies of the Organization or in any multilateral organization which participates in achieving the aims of the North Atlantic

Next page is Sec. 641-647  
(3)

146

Treaty, and of their appropriate staffs, and the expenses of participation in meetings of such organizations, including salaries, expenses, and allowances of personnel and dependents as authorized by the Foreign Service Act of 1946, as amended (22 U.S.C. 801), and allowances and expenses as provided in section 6 of the Act of July 30, 1946 (22 U.S.C. 287r).

"(b) The United States permanent representative to the North Atlantic Treaty Organization shall be appointed by the President by and with the advice and consent of the Senate and shall hold office at the pleasure of the President. Such representative shall have the rank and status of ambassador extraordinary and plenipotentiary and shall be a chief of mission, class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801).

"(c) Persons detailed to the international staff of the North Atlantic Treaty Organization in accordance with section 529 of this Act who are appointed as Foreign Service Reserve Officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)."

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"Sec. 414. Munitions Control. - (a) The President is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the export and import of arms, ammunition, and implements of war, including technical data relating thereto, other than by a United States Government agency. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto, for the purposes of this section.

"(b) As prescribed in regulations issued under this section, every person who engages in the business of manufacturing, exporting, or importing any arms, ammunition, or implements of war, including technical data relating thereto, designated by the President under subsection (a) shall register with the United States Government agency charged with the administration of this section, and, in addition, shall pay a registration fee which shall be prescribed by such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies) of any military firearms or ammunition of United States manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance program of the United States, whether or not advanced in value or improved in condition in a foreign country.

This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

"(c) Any person who willfully violates any provision of this section or any rule or regulation issued under this section, or who willfully, in a registration or license application, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$25,000 or imprisoned not more than two years, or both"

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"Sec. 417. Irish Counterpart. - Pursuant to section 115(b)(6) of the Economic Cooperation Act of 1948, as amended, the disposition within Ireland of the unencumbered balance, in the amount of approximately 6,000,000 Irish pounds, of the special account of Irish funds established under article IV of the Economic Cooperation Agreement between the United States of America and Ireland, dated June 28, 1948, for the purposes of -

"(1) scholarship exchange between the United States and Ireland;

"(2) other programs and projects (including the establishment of an Agricultural Institute) to improve and develop the agricultural production and marketing potential of Ireland and to increase the production and efficiency of Irish industry;

"(3) development programs and projects in aid of the foregoing objectives, is hereby approved, as provided in the agreement between the Government of the United States of America and the Government of Ireland, dated June 17, 1954.

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"Sec. 451(c). It is the purpose of this Act to advance the cause of freedom. The Congress joins with the President of the United States in proclaiming the hope that the peoples who have been subjected to the captivity of Communist despotism shall again enjoy the right of self-determination within a framework which will sustain the peace; that they shall again have the right to choose the form of government under which they will live, and that sovereign rights of self-government shall be restored to them all in accordance with the pledge of the Atlantic Charter. Funds available under subsection (a) of this section may be used for programs of information, relief, exchange of persons, education, and resettlement, to encourage the hopes and aspirations of

Next page is Secs. 641-647  
(5)

peoples who have been enslaved by communism." [Used for Cuban refugee program]

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"Sec. 502(a). Use of Foreign Currency. - Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law, proceeds of sales made under Section 550 of the Mutual Security Act of 1951, as amended, shall remain available and shall be used for any purposes of this Act, giving particular regard to the following purposes -

"(1) for providing military assistance to nations or mutual defense organizations eligible to receive assistance under this Act;

"(2) for purchase of goods or services in friendly nations;

"(3) for loans, under applicable provisions of this Act, to increase production of goods or services, including strategic materials, needed in any nation with which an agreement was negotiated, or in other friendly nations, with the authority to use currencies received in repayment for the purposes stated in this section or for deposit to the general account of the Treasury of the United States;

"(4) for developing new markets on a mutually beneficial basis;

"(5) for grants-in-aid to increase production for domestic needs in friendly countries; and

"(6) for purchasing materials for United States stockpiles.

"Sec. 502(b). Notwithstanding section 1415 of the Supplemental Appropriation Act, 1953, or any other provision of law, local currencies owned by the United States shall be made available to appropriate committees of the Congress engaged in carrying out their duties under section 136 of the Legislative Reorganization Act of 1946, as amended, and to the Joint Committee on Atomic Energy and the Joint Economic Committee and the Select Committees on Small Business of the Senate and House of Representatives for their local currency expenses: PROVIDED, That each member or employee of any such committee shall make, to the chairman of such committee in accordance with regulations prescribed by such committee, an itemized report showing the amounts and dollar equivalent values of each such foreign currency expended and the amounts of dollar expenditures made from appropriated funds in

connection with travel outside the United States, together with the purposes of the expenditure, including lodging, meals, transportation, and other purposes. Within the first sixty days that Congress is in session in each calendar year, the chairman of each such committee shall prepare a consolidated report showing the total itemized expenditures during the preceding calendar year of the committee and each subcommittee thereof, and of each member and employee of such committee or subcommittee, and shall forward such consolidated report to the Committee on House Administration of the House of Representatives (if the committee be a committee of the House of Representatives or a joint committee whose funds are disbursed by the Clerk of the House) or to the Committee on Appropriations of the Senate (if the committee be a Senate committee or a joint committee whose funds are disbursed by the Secretary of the Senate). Each such report submitted by each committee shall be published in the Congressional Record within ten legislative days after receipt by the Committee on House Administration of the House or the Committee on Appropriations of the Senate."

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"Sec. 514. International Educational Exchange Activities. - Foreign currencies or credits owed to or owned by the United States, where arising from this Act or otherwise, shall, upon a request from the Secretary of State certifying that such funds are required for the purpose of international educational exchange activities under programs authorized by section 32(b)(2) of the Surplus Property Act of 1944, as amended, be reserved by the Secretary of the Treasury for sale to the Department of State for such activities on the basis of the dollar value at the time of the reservation."

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"Sec. 523(d). Whenever the President determines that the achievement of United States foreign policy objectives in a given country requires it, he may direct the chief of the United States diplomatic mission there to issue regulations applicable to members of the Armed Forces and officers and employees of the United States Government, and to contractors with the United States Government and their employees, governing the extent to which their pay and allowances received and to be used in that country shall be paid in local currency. Notwithstanding any other law, United States Government agencies are authorized and directed to comply with such regulations."

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"Sec. 536. Joint Commission on Rural Reconstruction in China. - The President is authorized to continue to participate in the

Next page is Secs. 641-647  
(7)

Joint Commission on Rural Reconstruction in China and to appoint citizens of the United States to the Commission."

FAA Sec. 642(a) also authorizes the use of contingency fund (FAA Sec. 451(a)) to carry on activities heretofore carried on pursuant to MSA Secs. 405(a), 405(c), 405(d) and 451(c) until "the enactment of legislation authorizing and appropriating funds" for such activities. FAA Sec. 706 authorizes appropriations for Ryukyu immigration but since no appropriations have been made, contingency funds may still be used for that purpose.

FAA Sec. 642(b) states that references in law to the acts or provisions of acts repealed by Sec. 642(a) shall be considered to be references to the FAA or appropriate provisions thereof.

FAA Sec. 642(c) preserves amendments contained in acts repealed by Sec. 642(a) to acts not named in that subsection.

#### Section 643. SAVINGS PROVISIONS

FAA Sec. 643 is substantially similar to MSA Sec. 543.

FAA Sec. 643(a) is designed to permit, except as may be expressly provided to the contrary in the FAA, continuity of operations and programs despite the repeal of various provisions of law by preserving, until modified by appropriate authority, organizational, administrative, fiscal, program and other actions undertaken under authority of any of such repealed provision. In short, it provides that acts previously taken under laws now repealed remain valid.

FAA Sec. 643(b) provides that where the FAA establishes conditions which must be complied with before assistance may be furnished, compliance with, or satisfaction of, substantially similar conditions under (a) acts listed in FAA Sec. 642(a) or (b) acts repealed by the acts listed in Sec. 642(a), shall be deemed to constitute compliance with the conditions set forth in the Act. Thus, for example, it will not be necessary to renegotiate all the military assistance agreements concluded with certain countries under the MSA in order again to make such countries eligible to receive military assistance under the FAA. Nor will it be necessary to convert commensurate value counter-part arrangements to a proceeds basis since the commensurate value basis was provided for by an act repealed by an act listed in Sec. 642(a).

FAA Sec. 643(c) provides that funds made available under the MSA shall, unless otherwise authorized or provided by law, remain available for their original purposes in accordance with either (1) provisions of law originally applicable, or (2) in accordance with the provisions of law currently applicable to those purposes. Thus, for

example, MSA technical assistance funds now obligated but unexpended which when originally obligated were subject to the requirement of MSA Sec. 305 that such funds be used to purchase equipment only if the equipment is to be used for instruction or demonstration purposes, may now be used under the FAA's development grant provisions which do not contain the Sec. 305 restriction. Likewise, obligated but unexpended defense support and special assistance funds may be used subject to the same provisions as FAA supporting assistance funds will be subject to.

FAA Sec. 643(d) may be ignored since it applied only to the period of time between the enactment of the FAA and the enactment of permanent legislation for the Peace Corps, a period which has now elapsed.

#### Section 644. DEFINITIONS.

FAA Sec. 644 defines a number of terms used throughout the FAA. Changes from previous law which should be noted are (1) "commodity" which has been revised to apply only to items used for the purpose of furnishing nonmilitary assistance and (2) "Defense article" which covers commodities furnished for military assistance purposes.

#### Section 645. UNEXPENDED BALANCES.

FAA Sec. 645 serves the same purpose as MSA Sec. 548. It authorizes appropriation action to continue available for the same general purposes of unexpended balances of funds made available under the MSA. It also permits consolidation at any time of such balances, as well as their consolidation with appropriations made available under the FAA for the same general purpose, no appropriation action being necessary in this case.

#### Section 646. CONSTRUCTION.

FAA Sec. 646 is identical to MSA Sec. 546(a). It provides that the validity of any provision of the FAA or of its application to any persons or circumstances shall not affect the remainder of the FAA or the applicability of such provision to other persons or circumstances.

#### Section 647. DEPENDABLE FUEL SUPPLY.

FAA Sec. 647 is new. It states that it is of paramount importance that long-range economic plans take cognizance of the need for dependable supply of fuels and that dependance not be placed upon sources which are inherently hostile to free nations. Agencies

Next page is Secs. 614-647  
(9)

10/17/61

Secs. 641-647  
(9)

of the U. S. Government are directed to work with other countries in developing plans for basing development programs on the use of the large and stable supply of relatively low cost fuels available in the free world. In commenting on this provision the Executive Branch stated that it is so drafted that compliance with it would necessarily require forcing the subject of fuel supplies into all development programs with other countries.

Next page is 701-710  
(1)

153

## PART IV

## AMENDMENTS TO OTHER LAWS

Section 701. THE DEFENSE BASE ACT.

FAA Sec. 701 amends the Defense Base Act. Under that act contracts under the MSA, except those of DLF, are subject to its workmen's compensation provisions. By virtue of FAA Sec. 642(b), the exception for DLF will now be an exception for development loans. The amendment qualifies this exception by providing that development loan financed contracts are excepted unless the Secretary of Labor determines they should be covered.

Section 702. WAR HAZARDS COMPENSATION ACT.

Section 702 amends the War Hazards Compensation Act which provides for war-risk hazards and internment compensation coverage to certain persons employed outside the U.S. and which applied to MSA contracts in the same terms as the Defense Base Act. Under the amendment, the exception for development loan financed contracts is qualified in the same manner as in Defense Base Act as discussed in the preceding section.

Section 703. MUTUAL DEFENSE CONTROL ACT OF 1951 (BATTLE ACT).

The amendment provides a permanent authorization in the Battle Act for appropriations to the Department of State to carry out the objectives of the Battle Act.

Section 704. AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954  
(P.L. 480)

Sec. 104(e) of P.L. 480 has been amended to permit the President to authorize administration of the foreign currency loan program under that section by an agency other than the Export-Import Bank. It is contemplated that AID will make these loans. Under Section 104(e) of P.L. 480 up to 25% of the foreign currencies accruing under the surplus commodities sales under title I thereof are available for loans to private business (primarily American) abroad, and existing law requires these loans to be made through the Export-Import Bank.

Section 705. MIDDLE EAST RESOLUTION.

FAA Sec. 706 amends the Joint Resolution to promote peace and stability in the Middle East to change the time at which certain

Next page is Secs. 701-710  
(2)

reports to Congress shall be required.

Section 706. ACT TO PROVIDE FOR ASSISTANCE IN THE DEVELOPMENTS OF  
LATIN AMERICA AND IN THE RECONSTRUCTION OF CHILE

FAA Sec. 706 adds a new section to the Latin American Development and Chilean Reconstruction Act and permits the application of provisions of the FAA to assistance under the Latin American Act as the President determines to be necessary to carry out the purposes for which such Latin American funds were appropriated. Thus, he might determine that to carry out the purposes of the Latin American Act it was necessary to use funds to pay expenses of participants at meetings (FAA Sec. 636(a)(13)), or to rent or lease offices outside the United States. The new section added to the Latin American Development and Chilean Reconstruction Act earmarks not more than \$800,000 of funds under that Act for assisting and transporting to and settling in Latin America selected immigrants from Okinawa, and thus continues and strengthens the effect of MSA Sec. 405(b). See FAA Sec. 636(f) (use of development grants).

Section 707. MUTUAL SECURITY ACT OF 1954.

FAA Sec. 707 amends MSA 523(d), which was continued in effect by FAA Sec. 642, in order to change the standard for determining when the President may direct that certain persons shall be paid in local currency from the "achievement of United States foreign policy objectives," to the "prevention of improper currency transactions."

Section 708. FOREIGN SERVICE ACT.

There is no provision comparable to this in MSA. This section amends the Foreign Service Act of 1946 to provide authorities which ICA and the Department of State have for some time considered important. The express revisions are discussed individually below.

(1) Section 701 of the Foreign Service Act is amended to remove certain limitations on the Secretary's authority to provide orientation and language training.

Previously the Secretary could provide such training to spouses prior to assignment abroad only on a space available basis. Under this amendment the Secretary may provide such training to members of families including other members of the officer's family in addition to spouses. Furthermore, the Secretary may provide space to accommodate such family members and need not confine admission to those for whom space is available in facilities built to accommodate officers only. The HCFA indicated that the authority to train family members should be limited to "older children." (HCFA Rep. p. 96.) Under this amendment such training may be provided after the family arrives at post instead of only before assignment to post abroad.

(2) Section 872 of the Foreign Service Act is amended to simplify fiscal arrangements related to the payment of salary to retired foreign service annuitants by providing that the employing agency may pay the annuitant directly furnishing the Department with necessary information to enable it to make an adjustment in later payments of annuity or salary to cover deductions and withholdings which should have been made.

(3) Section 911 of the Foreign Service Act is amended to provide authority to pay travel expenses of officers and employees of the service who are U. S. citizens for rest and recuperation to locations abroad, other than their posts of assignment, having different environmental conditions than those at the post of assignment.

The HCFA stated:

"Only one round trip of rest and recuperation would be authorized during a continuous 2-year tour or two round trips during a 3-year tour. Travel time and the period spent in rest and recuperation will be charged to annual leave. This provision is of particular importance to the AID Agency, many of whose personnel are stationed in unhealthful posts isolated from modern civilization and climatically difficult. For example, an employee in Yemen or Khartoum might wish to take his family to Asmara or Cairo, respectively, but would be unable to do so because of the high cost of transportation." (HCFA Rep. p. 97.)

(4) Section 911 is further amended to permit payment of travel expenses for members of families accompanying, preceding or following an employee while he is enroute to post and is temporarily ordered for orientation and training or other TDY. Previously such travel and per diem was authorized only for a family accompanying an employee while proceeding via a direct route from post of assignment. This amendment will authorize such payments whether or not the stopover is on a direct route.

The HCFA states:

"This will defray travel expenses of members of an employee's family who reside for a short period in a place other than the post of assignment when the officer is undergoing orientation, training or consultation while en route to his post of assignment." (HCFA Rep. p. 97.)

Next page is 701-710  
(4)

(5) Section 933(a) of the Foreign Service Act is amended to permit a flexible tour of duty ranging from eighteen months to three years. Previously, the standard Foreign Service tour was two years. This section makes it flexible. The HCFA provided some general criteria to use in determining the length of tour for individual posts.

"Under the amended language the Department of State plans to designate approximately 75 percent of its regular posts abroad as those where 3 years would be the usual period before home leave; in the remainder the qualifying period for home leave would be reduced to 18 months or, alternatively, the officer would be eligible for 2 rest and recuperation trips during a 3-year tour. This provision is particularly important to the AID agency, nearly 50 percent of whose personnel serve at posts with a hardship differential of 20 to 25 percent." (HCFA Rep. p. 97.)

(6) Section 942 of the Foreign Service Act is amended to broaden the authority to provide travel to obtain medical care. Previously, when officers or employees or their dependents needed medical care, their travel expenses could be paid by the Department to the nearest available suitable facilities only if hospitalization was required. The authority also permitted travel for an attendant if the individual was too ill to travel unattended.

This amendment would permit travel to obtain medical care whether or not hospitalization is required and would broaden the authority to provide attendants to permit an adult to travel with a child too young to travel whether or not the child is too ill to travel unattended. The HCFA stated:

"Under existing law authority is lacking to pay the travel costs of an officer or his dependent who needs medical treatment or diagnosis of an illness unless hospitalization is required. It is not feasible with wide dispersal of personnel, particularly AID technicians, to provide medical personnel or facilities at all locations. The amended language will provide authorization for travel for personnel or members of their families who need medical care such as diagnosis, physical examination, inoculation, emergency dental care, outpatient care, hospitalization and obstetrical care which is inadequate or not available at their post of assignment and which cannot or should not be delayed

10/17/61

Secs. 701-710  
(5)

until the employee is eligible for home leave, transfer rest or recuperation, or other official travel. The amendment would also permit the payment of travel cost of an adult accompanying a child too young to travel alone who must leave the post to obtain necessary medical or emergency dental care. The committee regards this broader authority as a necessary provision to recruit individuals for work in remote areas away from mission headquarters." (HCFA Rep. p. 98.)

Section 709. ACT OF JULY 31, 1945 - FOOD AND AGRICULTURAL ORGANIZATION.

FAA Sec. 709 amends the Act of July 31, 1945, to remove the ceiling on appropriations of funds for the payment by the United States of its proportionate share in the expenses of the Food and Agricultural Organization, but the amendment retains the percentage limitation of earlier law. (See FAA Secs. 301-304 on contributions to international organizations in general.)

Section 710. INTERPARLIAMENTARY UNION.

FAA Sec. 710 increases the amount to be made available for American participation in the Interparliamentary Union.