

§ 1512. Transportation, open air testing, and disposal; Presidential determination; report to Congress; notice to Congress and State Governors

None of the funds authorized to be appropriated by this Act or any other Act may be used for the transportation of any lethal chemical or any biological warfare agent to or from any military installation in the United States, or the open air testing of any such agent within the United States, or the disposal of any such agent within the United States until the following procedures have been implemented:

(1) the Secretary of Defense (hereafter referred to in this chapter as the "Secretary") has determined that the transportation or testing proposed to be made is necessary in the interests of national security;

(2) the Secretary has brought the particulars of the proposed transportation, testing, or disposal to the attention of the Secretary of Health and Human Services, who in turn may direct the Surgeon General of the Public Health Service and other qualified persons to review such particulars with respect to any hazards to public health and safety which such transportation, testing, or disposal may pose and to recommend what precautionary measures are necessary to protect the public health and safety;

(3) the Secretary has implemented any precautionary measures recommended in accordance with paragraph (2) above (including, where practicable, the detoxification of any such agent, if such agent is to be transported to or from a military installation for disposal): *Provided, however*, That in the event the Secretary finds the recommendation submitted by the Surgeon General would have the effect of preventing the proposed transportation, testing, or disposal, the President may determine that overriding considerations of national security require such transportation, testing, or disposal be conducted. Any transportation, testing, or disposal conducted pursuant to such a Presidential determination shall be carried out in the safest practicable manner, and the President shall report his determination and an explanation thereof to the President of the Senate and the Speaker of the House of Representatives as far in advance as practicable; and

(4) the Secretary has provided notification that the transportation, testing, or disposal will take place, except where a Presidential determination has been made: (A) to the President of the Senate and the Speaker of the House of Representatives at least 10 days before any such transportation will be commenced and at least 30 days before any such testing or disposal will be commenced; (B) to the Governor of any State through which such agents will be transported, such notification to be provided appropriately in advance of any such transportation.

(Pub. L. 91-121, title IV, § 409(b), Nov. 19, 1969, 83 Stat. 209; Pub. L. 91-441, title V, § 506(b)(1), Oct. 7, 1970, 84 Stat. 912; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

This Act, referred to in provision preceding par. (1), means Pub. L. 91-121, Nov. 19, 1969, 83 Stat. 204, as amended. Provisions authorizing the appropriation of funds are not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1970—Pub. L. 91-441 inserted reference to the disposal of lethal chemical or biological warfare agents in the United States.

CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in par. (2), pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

CHEMICAL MUNITIONS TRANSPORTATION FROM OKINAWA TO THE UNITED STATES

Pub. L. 91-672, § 13, Jan. 12, 1971, 84 Stat. 2055, provided that: "No funds authorized or appropriated pursuant to this or any other law may be used to transport chemical munitions from the Island of Okinawa to the United States. Such funds as are necessary for the detoxification or destruction of the above described chemical munitions are hereby authorized and shall be used for the detoxification or destruction of chemical munitions only outside the United States. For purposes of this section, the term 'United States' means the several States and the District of Columbia."

EX ORD. NO. 11850. RENUNCIATION OF CERTAIN USES IN WAR OF CHEMICAL HERBICIDES AND RIOT CONTROL AGENTS

Ex. Ord. No. 11850, Apr. 8, 1975, 40 F.R. 16187, provided: The United States renounces, as a matter of national policy, first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within U.S. bases and installations or around their immediate defensive perimeters, and first use of riot control agents in war except in defensive military modes to save lives such as:

- (a) Use of riot control agents in riot control situations in areas under direct and distinct U.S. military control, to include controlling rioting prisoners of war.
- (b) Use of riot control agents in situations in which civilians are used to mask or screen attacks and civilian casualties can be reduced or avoided.
- (c) Use of riot control agents in rescue missions in remotely isolated areas, of downed aircrews and passengers, and escaping prisoners.
- (d) Use of riot control agents in rear echelon areas outside the zone of immediate combat to protect convoys from civil disturbances, terrorists and paramilitary organizations.

I have determined that the provisions and procedures prescribed by this Order are necessary to ensure proper implementation and observance of such national policy.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America by the Constitution and laws of the United States and as Commander-in-Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense shall take all necessary measures to ensure that the use by the Armed Forces of the United States of any riot control agents and chemical herbicides in war is prohibited unless such use has Presidential approval, in advance.

SEC. 2. The Secretary of Defense shall prescribe the rules and regulations he deems necessary to ensure that the national policy herein announced shall be observed by the Armed Forces of the United States.

GERALD R. FORD.

§ 1512a. Transportation of chemical munitions**(a) Prohibition of transportation across State lines**

The Secretary of Defense may not transport any chemical munition that constitutes part of the chemical weapons stockpile out of the State in which that munition is located on October 5, 1994, and, in the case of any such chemical munition not located in a State on October 5, 1994, may not transport any such munition into a State.

(b) Transportation of chemical munitions not in chemical weapons stockpile

In the case of any chemical munitions that are discovered or otherwise come within the control of the Department of Defense and that do not constitute part of the chemical weapons stockpile, the Secretary of Defense may transport such munitions to the nearest chemical munitions stockpile storage facility that has necessary permits for receiving and storing such items if the transportation of such munitions to that facility—

- (1) is considered by the Secretary of Defense to be necessary; and
- (2) can be accomplished while protecting public health and safety.

(Pub. L. 103-337, div. A, title I, § 143, Oct. 5, 1994, 108 Stat. 2689.)

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1995, and not as part of Pub. L. 91-121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

§ 1513. Deployment, storage, and disposal; notification to host country and Congress; international law violations; reports to Congress and international organizations

(1) None of the funds authorized to be appropriated by this Act or any other Act may be used for the future deployment, storage, or disposal, at any place outside the United States of—

- (A) any lethal chemical or any biological warfare agent, or
- (B) any delivery system specifically designed to disseminate any such agent,

unless prior notice of such deployment, storage, or disposal has been given to the country exercising jurisdiction over such place. In the case of any place outside the United States which is under the jurisdiction or control of the United States Government, no such action may be taken unless the Secretary gives prior notice of such action to the President of the Senate and the Speaker of the House of Representatives. As used in this paragraph, the term “United States” means the several States and the District of Columbia.

(2) None of the funds authorized by this Act or any other Act shall be used for the future testing, development, transportation, storage, or disposal of any lethal chemical or any biological warfare agent outside the United States, or for the disposal of any munitions in international waters, if the Secretary of State, after appropriate notice by the Secretary whenever any

such action is contemplated, determines that such testing, development, transportation, storage, or disposal will violate international law. The Secretary of State shall report all determinations made by him under this paragraph to the President of the Senate and the Speaker of the House of Representatives, and to all appropriate international organizations, or organs thereof, in the event such report is required by treaty or other international agreement.

(Pub. L. 91-121, title IV, § 409(c), Nov. 19, 1969, 83 Stat. 210; Pub. L. 91-441, title V, § 506(b)(2), (3), Oct. 7, 1970, 84 Stat. 912.)

REFERENCES IN TEXT

This Act, referred to in pars. (1) and (2), means Pub. L. 91-121, Nov. 19, 1969, 83 Stat. 204, as amended. Provisions authorizing the appropriation of funds are not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1970—Par. (1). Pub. L. 91-441, § 506(b)(2), inserted reference to disposal of lethal chemical or biological warfare agents or delivery systems for such agents.

Par. (2). Pub. L. 91-441, § 506(b)(3), inserted reference to disposal of munitions in international waters.

WITHDRAWAL OF EUROPEAN CHEMICAL STOCKPILE

Pub. L. 100-180, div. A, title I, § 126, Dec. 4, 1987, 101 Stat. 1044, provided that: “Chemical munitions of the United States stored in Europe on the date of the enactment of this Act [Dec. 4, 1987] should not be removed from Europe unless such munitions are replaced contemporaneously with binary chemical munitions stationed on the soil of at least one European member nation of the North Atlantic Treaty Organization.”

§ 1514. “United States” defined

Unless otherwise indicated, as used in this chapter the term “United States” means the several States the District of Columbia, and the territories and possessions of the United States. (Pub. L. 91-121, title IV, § 409(d), Nov. 19, 1969, 83 Stat. 210.)

§ 1515. Suspension; Presidential authorization

After November 19, 1969, the operation of this chapter, or any portion thereof, may be suspended by the President during the period of any war declared by Congress and during the period of any national emergency declared by Congress or by the President.

(Pub. L. 91-121, title IV, § 409(e), Nov. 19, 1969, 83 Stat. 210.)

§ 1516. Delivery systems

None of the funds authorized to be appropriated by this Act shall be used for the procurement of delivery systems specifically designed to disseminate lethal chemical or any biological warfare agents, or for the procurement of delivery system parts or components specifically designed for such purpose, unless the President shall certify to the Congress that such procurement is essential to the safety and security of the United States.

(Pub. L. 91-441, title V, § 506(a), Oct. 7, 1970, 84 Stat. 912.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91-441, Oct. 7, 1970, 84 Stat. 912. Provisions authorizing the ap-