

(A) any weapon, weapons system, munition, aircraft, vessel, boat, or other implement of war,

(B) any property, installation, commodity, material, equipment, supply, or goods used for the purposes of making military sales,

(C) any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed in this paragraph, and

(D) any component or part of any article listed in this paragraph,

but does not include merchant vessels or (as defined by the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]) source material (except uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity), byproduct material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving Restricted Data;

(4) “defense service”, except as provided in paragraph (7) of this section, includes any service, test, inspection, repair, training, publication, technical or other assistance, or defense information (as defined in section 2403(e) of this title), used for the purposes of making military sales, but does not include design and construction services under section 2769 of this title;

(5) “training” includes formal or informal instruction of foreign students in the United States or overseas by officers or employees of the United States, contract technicians, or contractors (including instruction at civilian institutions), or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice to foreign military units and forces;

(6) “major defense equipment” means any item of significant military equipment on the United States Munitions List having a non-recurring research and development cost of more than \$50,000,000 or a total production cost of more than \$200,000,000;

(7) “defense articles and defense services” means, with respect to commercial exports subject to the provisions of section 2778 of this title, those items designated by the President pursuant to subsection (a)(1) of such section;

(8) “design and construction services” means, with respect to sales under section 2769 of this title, the design and construction of real property facilities, including necessary construction equipment and materials, engineering services, construction contract management services relating thereto, and technical advisory assistance in the operation and maintenance of real property facilities provided or performed by any department or agency of the Department of Defense or by a contractor pursuant to a contract with such department or agency;

(9) “significant military equipment” means articles—

(A) for which special export controls are warranted because of the capacity of such

articles for substantial military utility or capability; and

(B) identified on the United States Munitions List;

(10) “weapons of mass destruction” has the meaning provided by section 2302(1) of title 50; and

(11) “Sales territory” means a country or group of countries to which a defense article or defense service is authorized to be reexported.

(Pub. L. 90-629, ch. 4, §47, as added Pub. L. 93-189, §25(12), Dec. 17, 1973, 87 Stat. 731; amended Pub. L. 94-329, title II, §215, June 30, 1976, 90 Stat. 746; Pub. L. 96-92, §22, Oct. 29, 1979, 93 Stat. 710; Pub. L. 96-533, title I, §105(f), Dec. 16, 1980, 94 Stat. 3135; Pub. L. 99-83, title I, §107(b), title XII, §1211(b)(3), Aug. 8, 1985, 99 Stat. 197, 279; Pub. L. 104-164, title I, §144, July 21, 1996, 110 Stat. 1434; Pub. L. 107-228, div. B, title XII, §1202(b), title XIV, §1405(a)(4), Sept. 30, 2002, 116 Stat. 1427, 1458.)

REFERENCES IN TEXT

This chapter, referred to in introductory provisions, was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Atomic Energy Act of 1954, as amended, referred to in par. (3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 921, and amended, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

2002—Par. (10). Pub. L. 107-228, §1202(b), added par. (10).

Par. (11). Pub. L. 107-228, §1405(a)(4), added par. (11).

1996—Par. (9). Pub. L. 104-164 added par. (9).

1985—Par. (2). Pub. L. 99-83, §107(b), inserted “, except as otherwise provided in section 2761(a) of this title.”.

Par. (6). Pub. L. 99-83, §1211(b)(3), substituted “military” for “combat”.

1980—Par. (4). Pub. L. 96-533, §105(f)(1), excluded from term “defense service” design and construction services under section 2769 of this title.

Par. (8). Pub. L. 96-533, §105(f)(2)-(4), added par. (8).

1979—Par. (3). Pub. L. 96-92 defined “defense article” to include uranium depleted in the isotope 235 which is incorporated in defense articles solely to take advantage of high density or pyrophoric characteristics unrelated to radioactivity.

1976—Pars. (3) to (7). Pub. L. 94-329 added pars. (3) to (7).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

SUBCHAPTER V—SPECIAL DEFENSE ACQUISITION FUND

§ 2795. Fund

(a) **Establishment; purposes; special requirements and responsibilities; continuous orders for certain articles and services; articles for narcotics control purposes**

(1) Under the direction of the President and in consultation with the Secretary of State, the

Secretary of Defense shall establish a Special Defense Acquisition Fund (hereafter in this subchapter referred to as the “Fund”), to be used as a revolving fund separate from other accounts, under the control of the Department of Defense, to finance the acquisition of defense articles and defense service in anticipation of their transfer pursuant to this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or as otherwise authorized by law, to eligible foreign countries and international organizations, and may acquire such articles and services with the funds in the Fund as he may determine. Acquisition under this subchapter of items for which the initial issue quantity requirements for United States Armed Forces have not been fulfilled and are not under current procurement contract shall be emphasized when compatible with security assistance requirements for the transfer of such items.

(2) Nothing in this subchapter may be construed to limit or impair any responsibilities conferred upon the Secretary of State or the Secretary of Defense under this chapter or the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.].

(3) The Fund may be used to keep on continuous order such defense articles and defense services as are assigned by the Department of Defense for integrated management by a single agency thereof for the common use of all military departments in anticipation of the transfer of similar defense articles and defense services to foreign countries and international organizations pursuant to this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or other law.

(4) The Fund shall also be used to acquire defense articles that are particularly suited for use for narcotics control purposes and are appropriate to the needs of recipient countries, such as small boats, planes (including helicopters), and communications equipment.

(b) Collections in Fund

The Fund shall consist of—

(1) collections from sales made under letters of offer issued pursuant to section 2761(a)(1)(A) of this title representing the actual value of defense articles not intended to be replaced in stock,

(2) collections from sales representing the value of asset use charges (including contractor rental payments for United States Government-owned plant and production equipment) and charges for the proportionate recoupment of nonrecurring research, development, and production costs, and

(3) collections from sales made under letters of offer (or transfers made under the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.]) of defense articles and defense services acquired under this subchapter, representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 2761(a)(1) of this title or section 2762 of this title or section 644(m) of the Foreign Assistance Act of 1961 [22 U.S.C. 2403(m)], as appropriate,

together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.

(c) Amounts

(1) The size of the Fund may not exceed such dollar amount as is prescribed in section 114(c) of title 10. For purposes of this limitation, the size of the Fund is the amounts in the Fund plus the value (in terms of acquisition cost) of the defense articles acquired under this subchapter which have not been transferred from the Fund in accordance with this subchapter.

(2) Amounts in the Fund shall be available for obligation in any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 90-629, ch. 5, § 51, as added Pub. L. 97-113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1522; amended Pub. L. 99-83, title I, § 121, Aug. 8, 1985, 99 Stat. 204; Pub. L. 99-139, § 1(a), Oct. 30, 1985, 99 Stat. 562; Pub. L. 99-433, title I, § 110(h)(1), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 101-231, § 4, Dec. 13, 1989, 103 Stat. 1957; Pub. L. 104-164, title I, § 145(b), July 21, 1996, 110 Stat. 1434.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1) to (3), was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsecs. (a) and (b)(3), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(4). Pub. L. 104-164 redesignated subpar. (A) as entire par. (4) and struck out subpar. (B) which read as follows: “Each report pursuant to section 2795b(a) of this title shall designate the defense articles that have been acquired or are to be acquired pursuant to this paragraph and the defense articles acquired under this subchapter that were transferred for use in narcotics control purposes.”

1989—Subsec. (a)(4). Pub. L. 101-231 added par. (4).

1986—Subsec. (c)(1). Pub. L. 99-433 substituted “section 114(c)” for “section 138(g)”.

1985—Subsec. (a)(3). Pub. L. 99-83, § 121(a), added par. (3).

Subsec. (b). Pub. L. 99-139 amended subsec. (b) generally, so as to read similar to how it read prior to the amendment by Pub. L. 99-83.

Pub. L. 99-83 amended subsec. (b) to read as follows: “The Fund shall consist of collections from sales made under letters of offer, or transfers made under the Foreign Assistance Act of 1961, of defense articles and defense services acquired under this subchapter (representing the value of such items calculated in accordance with subparagraph (B) or (C) of section 2761(a)(1) of this title or section 2762 of this title or section 644(m) of the Foreign Assistance Act of 1961, as appropriate), together with such funds as may be authorized and appropriated or otherwise made available for the purposes of the Fund.”

EFFECTIVE DATE OF 1985 AMENDMENTS

Pub. L. 99-139, § 1(b), Oct. 30, 1985, 99 Stat. 562, provided that: “The amendment made by subsection (a) [amending this section] shall take effect as of October 1, 1985.”

Amendment by Pub. L. 99-83 effective Oct. 1, 1985, see section 1301 of Pub. L. 99-83, set out as a note under section 2151-1 of this title.

§ 2795a. Use and transfer of items procured by Fund

(a) Authorization

No defense article or defense service acquired by the Secretary of Defense under this subchapter may be transferred to any foreign country or international organization unless such transfer is authorized by this chapter, the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], or other law.

(b) Temporary use

The President may authorize the temporary use by the United States Armed Forces of defense articles and defense services acquired under this subchapter prior to their transfer to a foreign country or international organization, if such is necessary to meet national defense requirements and the United States Armed Forces bear the costs of operation and maintenance of such articles or services while in their use and the costs of restoration or replacement upon the termination of such use.

(c) Storage, maintenance and other costs

Except as provided in subsection (b) of this section, the Fund may be used to pay for storage, maintenance, and other costs related to the preservation and preparation for transfer of defense articles and defense services acquired under this subchapter prior to their transfer, as well as the administrative costs of the Department of Defense incurred in the acquisition of such items to the extent not reimbursed pursuant to section 2792(b) of this title.

(Pub. L. 90-629, ch. 5, § 52, as added Pub. L. 97-113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1523.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Defense by section 1(q) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2795b. Repealed. Pub. L. 104-164, title I, § 145(a), July 21, 1996, 110 Stat. 1434

Section, Pub. L. 90-629, ch. 5, § 53, as added Pub. L. 97-113, title I, § 108(a), Dec. 29, 1981, 95 Stat. 1524; amended Pub. L. 99-433, title I, § 110(h)(2), Oct. 1, 1986, 100 Stat. 1004, directed President to submit annual report to Congress on acquisitions of defense articles and services under this subchapter and required report to include estimate of likely procurements to be made through Special Defense Acquisition Fund.

SUBCHAPTER VI—LEASES OF DEFENSE ARTICLES AND LOAN AUTHORITY FOR COOPERATIVE RESEARCH AND DEVELOPMENT PURPOSES

§ 2796. Leasing authority

(a) Preconditions

The President may lease defense articles in the stocks of the Department of Defense to an eligible foreign country or international organization if—

(1) he determines that there are compelling foreign policy and national security reasons for providing such articles on a lease basis rather than on a sales basis under this chapter;

(2) he determines that the articles are not for the time needed for public use;

(3) the President first considers the effects of the lease of the articles on the national technology and industrial base, particularly the extent, if any, to which the lease reduces the opportunities of entities in the national technology and industrial base to sell new equipment to the country or countries to which the articles are leased; and

(4) the country or international organization has agreed to pay in United States dollars all costs incurred by the United States Government in leasing such articles, including reimbursement for depreciation of such articles while leased, the costs of restoration or replacement if the articles are damaged while leased, and, if the articles are lost or destroyed while leased—

(A) in the event the United States intends to replace the articles lost or destroyed, the replacement cost (less any depreciation in the value) of the articles; or

(B) in the event the United States does not intend to replace the articles lost or destroyed, an amount not less than the actual value (less any depreciation in the value) specified in the lease agreement.

The requirement of paragraph (4) shall not apply to leases entered into for purposes of cooperative research or development, military exercises, or communications or electronics interface projects. The President may waive the requirement of paragraph (4) for reimbursement of depreciation for any defense article which has passed three-quarters of its normal service life if the President determines that to do so is important to the national security interest of the United States. The President may waive the requirement of paragraph (4) with respect to a lease which is made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense, except that this waiver authority—

(A) may be exercised only if the President submits to the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate, in accordance with the regular notification procedures of those Committees, a detailed notification for each lease with respect to which the authority is exercised; and