

§ 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 Repealed.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

(B) may be exercised only during the fiscal year¹ the current fiscal year and only with respect to one country, unless the Congress hereafter provides otherwise.

The preceding sentence does not constitute authorization of appropriations for payments by the United States for leased articles.

(b) Duration; termination

(1) Each lease agreement under this section shall be for a fixed duration which may not exceed (A) five years, and (B) a specified period of time required to complete major refurbishment work of the leased articles to be performed prior to the delivery of the leased articles, and shall provide that, at any time during the duration of the lease, the President may terminate the lease and require the immediate return of the leased articles.

(2) In this subsection, the term “major refurbishment work” means work for which the period of performance is 6 months or more.

(c) Applicable statutory authorities

Defense articles in the stocks of the Department of Defense may be leased or loaned to a foreign country or international organization only under the authority of this subchapter or chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], and may not be leased to a foreign country or international organization under the authority of section 2667 of title 10.

(Pub. L. 90-629, ch. 6, §61, as added Pub. L. 97-113, title I, §109(a), Dec. 29, 1981, 95 Stat. 1524; amended Pub. L. 99-500, §147, Oct. 18, 1986, 100 Stat. 1783-351, and Pub. L. 99-591, §147, Oct. 30, 1986, 100 Stat. 3341-354; Pub. L. 100-202, §101(e) [title V, §556], Dec. 22, 1987, 101 Stat. 1329-131, 1329-170; Pub. L. 100-461, title V, §552, Oct. 1, 1988, 102 Stat. 2268-35; Pub. L. 101-167, title V, §550, Nov. 21, 1989, 103 Stat. 1235; Pub. L. 101-513, title V, §546, Nov. 5, 1990, 104 Stat. 2019; Pub. L. 102-145, §118, as added Pub. L. 102-266, §102, Apr. 1, 1992, 106 Stat. 93; Pub. L. 102-391, title V, §544, Oct. 6, 1992, 106 Stat. 1672; Pub. L. 103-87, title V, §524, Sept. 30, 1993, 107 Stat. 952; Pub. L. 103-236, title VII, §731(e), Apr. 30, 1994, 108 Stat. 503; Pub. L. 103-306, title V, §524, Aug. 23, 1994, 108 Stat. 1632; Pub. L. 104-107, title V, §524, Feb. 12, 1996, 110 Stat. 729; Pub. L. 104-164, title I, §§146, 153(a), July 21, 1996, 110 Stat. 1434, 1440; Pub. L. 104-208, div. A, title I, §101(c) [title V, §524], Sept. 30, 1996, 110 Stat. 3009-121, 3009-149; Pub. L. 105-118, title V, §524, Nov. 26, 1997, 111 Stat. 2412; Pub. L. 105-277, div. A, §101(d) [title V, §524], Oct. 21, 1998, 112 Stat. 2681-150, 2681-177; Pub. L. 107-228, div. B, title XII, §1233, Sept. 30, 2002, 116 Stat. 1433.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), 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. (c), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as

¹ So in original. The words “the fiscal year” probably should not appear.

amended. Chapter 2 of part II of that Act is classified generally to part II (§2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

CODIFICATION

Amendment by Pub. L. 102-145 is based on section 545 of H.R. 2621, One Hundred Second Congress, 1st Session, as passed by the House of Representatives on June 19, 1991, which was enacted into law by Pub. L. 102-145, §118, as added by Pub. L. 102-266, §102, Apr. 1, 1992, 106 Stat. 93. Section 118 of Pub. L. 102-145 provided that the authority and conditions provided in such section 545 shall be applicable to funds appropriated by Pub. L. 102-145 (and are hereby enacted) in lieu of the authority and conditions provided in section 546 of Pub. L. 101-513. See 1990, 1991, and 1992 Amendment notes below. Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107-228 designated existing provisions as par. (1), substituted “which may not exceed (A) five years, and (B) a specified period of time required to complete major refurbishment work of the leased articles prior to the delivery of the leased articles,” for “of not to exceed five years”, and added par. (2).

1998—Subsec. (a). Pub. L. 105-277 substituted “the current fiscal year” for “1998” in par. (B).

1997—Subsec. (a). Pub. L. 105-118 substituted “1998” for “1997” in par. (B).

1996—Subsec. (a). Pub. L. 104-164, §153(a), struck out “, or to any defense article which has passed three-quarters of its normal service life.” after “electronics interface projects” in second sentence and inserted after second sentence “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.”

Pub. L. 104-208 substituted “1997” for “1996” in par. (B).

Pub. L. 104-107 substituted “1996” for “1995” in par. (B).

Subsec. (a)(4). Pub. L. 104-164, §146, substituted “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” for “and the replacement cost (less any depreciation in the value) of the articles if the articles are lost or destroyed while leased”.

1994—Subsec. (a). Pub. L. 103-306 substituted “1995” for “1994” in par. (B).

Pub. L. 103-236 struck out “and” at end of par. (2), added par. (3), redesignated former par. (3) as (4), and substituted “paragraph (4)” for “paragraph (3)” in two places in provisions following par. (4).

1993—Subsec. (a). Pub. L. 103-87 substituted “1994” for “1993” in par. (B).

1992—Subsec. (a). Pub. L. 102-391 substituted “1993” for “1992” in par. (B).

Pub. L. 102-266 added Pub. L. 102-145, §118. See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102-145, §118, as added by Pub. L. 102-266, substituted “1992” for “1991” in par. (B). See Codification note above.

1990—Subsec. (a). Pub. L. 101-513 substituted “1991” for “1990” in par. (B).

1989—Subsec. (a). Pub. L. 101-167 substituted “1990” for “1989” in par. (B).

1988—Subsec. (a). Pub. L. 100-461 substituted “1989” for “1988” in par. (B).

1987—Subsec. (a). Pub. L. 100-202 substituted “1988” for “1987” in par. (B).

1986—Subsec. (a). Pub. L. 99-500 and Pub. L. 99-591 inserted provision authorizing the President to waive the requirements of par. (3) 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 and providing exceptions to such waiver authority.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-164, title I, §153(b), July 21, 1996, 110 Stat. 1440, provided that: “The third sentence of section 61(a) of the Arms Export Control Act, as added by subsection (a)(2) [22 U.S.C. 2796(a)], shall apply only with respect to a defense article leased on or after the date of the enactment of this Act [July 21, 1996].”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense by section 1(r) 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.

§ 2796a. Reports to Congress

(a) Written certification to Speaker of the House and chairmen of Congressional committees

Before entering into or renewing any agreement with a foreign country or international organization to lease any defense article under this subchapter, or to loan any defense article under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], for a period of one year or longer, the President shall transmit to the Speaker of the House of Representatives, and to the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Armed Services of the Senate, a written certification which specifies—

- (1) the country or international organization to which the defense article is to be leased or loaned;
- (2) the type, quantity, and value (in terms of replacement cost) of the defense article to be leased or loaned;
- (3) the terms and duration of the lease or loan; and
- (4) a justification for the lease or loan, including an explanation of why the defense article is being leased or loaned rather than sold under this chapter.

(b) Waiver; determination of emergency

The President may waive the requirements of this section (and in the case of an agreement described in section 2796b of this title, may waive the provisions of that section) if he states in his certification, that an emergency exists which requires that the lease or loan be entered into immediately in the national security interests of the United States. If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.

(c) Transmission of certification

The certification required by subsection (a) of this section shall be transmitted—

(1) not less than 15 calendar days before the agreement is entered into or renewed in the case of an agreement with the North Atlantic Treaty Organization, any member country of that Organization or Australia, Japan, the Republic of Korea, Israel, or New Zealand; and

(2) not less than 30 calendar days before the agreement is entered into or renewed in the case of an agreement with any other organization or country.

(Pub. L. 90-629, ch. 6, §62, as added Pub. L. 97-113, title I, §109(a), Dec. 29, 1981, 95 Stat. 1525; amended Pub. L. 104-164, title I, §141(e)(1), July 21, 1996, 110 Stat. 1432; Pub. L. 110-429, title II, §203(b)(1), Oct. 15, 2008, 122 Stat. 4845; Pub. L. 111-266, title III, §301(1), Oct. 8, 2010, 124 Stat. 2804.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§2311 et seq.) of subchapter II of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

This chapter, referred to in subsec. (a)(4), 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.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111-266 inserted “Israel,” before “or New Zealand”.

2008—Subsec. (c)(1). Pub. L. 110-429 inserted “the Republic of Korea,” before “or New Zealand”.

1996—Subsec. (a). Pub. L. 104-164, §141(e)(1)(A), substituted “Before” for “Not less than 30 days before”.

Subsec. (b). Pub. L. 104-164, §141(e)(1)(B), substituted “states in his certification” for “determines, and immediately reports to the Congress” and inserted at end “If the President states in his certification that such an emergency exists, he shall set forth in the certification a detailed justification for his determination, including a description of the emergency circumstances which necessitate that the lease be entered into immediately and a discussion of the national security interests involved.”

Subsec. (c). Pub. L. 104-164, §141(e)(1)(C), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-164 applicable with respect to certifications required to be submitted on or after July 21, 1996, see section 141(f) of Pub. L. 104-164, set out as a note under section 2753 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense by section 1(r) 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.

§ 2796b. Legislative review procedures

(a) Applicability

(1) Subject to paragraph (2), in the case of any agreement involving the lease under this subchapter, or the loan under chapter 2 of part II of the Foreign Assistance Act of 1961 [22 U.S.C. 2311 et seq.], to any foreign country or international organization for a period of one year or longer of any defense articles which are either (i) major defense equipment valued (in terms of its re-