

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 text, is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 919, 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.

SPECIFIC APPLICATION OF OTHER PROVISIONS TO THIS CHAPTER

Except for laws specified in this section, other provisions inapplicable to this chapter without a specific reference thereto or to sales of defense articles and defense services under any Act, see section 45(c) of Pub. L. 90-629, set out as a note under section 2751 of this title.

§ 2794. Definitions

For purposes of this chapter, the term—

(1) “excess defense article” has the meaning provided by section 2403(g) of this title;

(2) “value” means, in the case of an excess defense article, except as otherwise provided in section 2761(a) of this title, not less than the greater of—

(A) the gross cost incurred by the United States Government in repairing, rehabilitating, or modifying such article, plus the scrap value; or

(B) the market value, if ascertainable;

(3) “defense article”, except as provided in paragraph (7) of this section, means, with respect to a sale or transfer by the United States under the authority of this chapter or any other foreign assistance or sales program of the United States—

(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, means, with respect to a sale or transfer by the United States under the authority of this chapter or any other foreign assistance or sales program of the United States, 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; Pub. L. 113-276, title II, §§ 207, 208(b)(1)(B), Dec. 18, 2014, 128 Stat. 2992, 2993.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1321, which is classified principally to this chap-

ter. 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. 919, 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

2014—Par. (2). Pub. L. 113-276, §208(b)(1)(B), substituted “2761(a) of this title,” for “2761(a) of this title,” in introductory provisions.

Par. (3). Pub. L. 113-276, §207(1), in introductory provisions, substituted “means, with respect to a sale or transfer by the United States under the authority of this chapter or any other foreign assistance or sales program of the United States—” for “includes—”.

Par. (4). Pub. L. 113-276, §207(2), substituted “means, with respect to a sale or transfer by the United States under the authority of this chapter or any other foreign assistance or sales program of the United States,” for “includes”.

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; amend-