

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 de-

fense 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

For delegation of functions of the President under subsec. (b) of this section, see section 1(s) of Ex. Ord. No. 13637, Mar. 8, 2013, 78 F.R. 16131, set out as a note

under section 2751 of this title. Functions were previously delegated by Ex. Ord. No. 11958, which was formerly set out as a note under section 2751 of this title and was revoked, subject to a savings provision, by section 4 of Ex. Ord. No. 13637.

§ 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,

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