

“(h) NO LIABILITY FOR THE UNITED STATES.—Upon the transfer of military equipment under subsection (b), the United States shall not be liable for any death, injury, loss, or damage that results from the use of such military equipment by any person other than the United States.

“(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a transfer under subsection (b) as the Secretary considers appropriate to protect the interests of the United States.

“(j) DEFINITIONS.—In this subsection:

“(1) The term ‘major system’ has the meaning provided in section 2302 of title 10, United States Code.

“(2) The term ‘contractual agreement’ includes contracts, grants, cooperative agreements, and other transactions.”

#### USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99-190, §101(b) [title VIII, §8015], Dec. 19, 1985, 99 Stat. 1185, 1205, which provided that appropriations available to the Department of Defense for research and development could be used for 10 U.S.C. 2353 and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned, was repealed and re-stated in section 2351(b) of this title by Pub. L. 100-370, §1(g)(1)(B), (2), July 19, 1988, 102 Stat. 846.

#### § 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

#### HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i>  | <i>Source (Statutes at Large)</i>         |
|------------------------|--|---|
| 2354(a) .....          | 5:235f (1st sentence, less provisos).<br>5:475k (1st sentence, less provisos).<br>5:628f (1st sentence, less provisos).    | July 16, 1952, ch. 882, §5, 66 Stat. 726. |
| 2354(b) .....          | 5:235f (1st proviso of 1st sentence).<br>5:475k (1st proviso of 1st sentence).<br>5:628f (1st proviso of 1st sentence).    |   |
| 2354(c) .....          | 5:235f (last proviso of 1st sentence).<br>5:475k (last proviso of 1st sentence).<br>5:628f (last proviso of 1st sentence). |   |
| 2354(d) .....          | 5:235f (less 1st sentence).<br>5:475k (less 1st sentence).<br>5:628f (less 1st sentence).                                  |   |

In subsection (a), the words “Liability on account of”, and “of such claims” are omitted as surplusage. In clauses (1) and (2), the word “from” is substituted for the words “arising as a result of”.

In subsections (a) and (b), the words “United States” are substituted for the word “Government”.

In subsection (b), the words “made under subsection (a), that provides for indemnification” are substituted for the words “so providing \* \* \* with respect to any alleged liability for such death”. The words “appropriate” and “or actions filed \* \* \* or made” are omitted as surplusage.

In subsection (c), the words “by the Government”, “authority of”, and “for such purpose” are omitted as surplusage.

In subsection (d), the words “by the Congress” and “the making of” are omitted as surplusage. The words “or both” are inserted to conform to subsection (a).

#### § 2355. Repealed. Pub. L. 103-355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, authorized Secretary of each military department to prescribe by regulation the extent of itemization, substantiation, or certification of vouchers for funds spent under research or development contracts prior to payment.

#### § 2356. Repealed. Pub. L. 104-106, div. A, title VIII, § 802(a), Feb. 10, 1996, 110 Stat. 390]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85-861, §1(43A), 72 Stat. 1457; July 18, 1984, Pub. L. 98-369, div. B, title VII, §2727(d), 98 Stat. 1195; Dec. 4, 1987, Pub. L. 100-180, div. A, title XII, §1231(18)(B), 101 Stat. 1161, related to delegations of authority under sections 1584, 2353, 2354, and 2355 of this title.

#### § 2357. Technology protection features activities

(a) ACTIVITIES.—The Secretary of Defense shall carry out activities to develop and incorporate technology protection features in a designated system during the research and development phase of such system.

(b) COST-SHARING.—Any contract for the design or development of a system resulting from activities under subsection (a) for the purpose of enhancing or enabling the exportability of the system, either for the development of program protection strategies for the system or the design and incorporation of exportability features into the system, shall include a cost-sharing provision that requires the contractor to bear half of the cost of such activities, or such other portion of such cost as the Secretary considers appropriate upon showing of good cause.